

A CANDID
REVIEW of FACTS,

In the LITIGATION between

PETER BARFOOT, Esq.

A N D

RICHARD BARGUS, and OTHERS,

W I T H T H E

BISHOP of WINCHESTER,

CONCERNING THE RIGHT OF

FAREHAM QUAY.

D E C I D E D

BY THE FINAL AWARD

O F

ROBERT POPE BLACHFORD, Esq.

Of OSBORNE, in the ISLE of WIGHT.

RARO ANTECEDENTEM SCELESTUM

DESERUIT PEDE POENA, CLAUDO.——HORACE.

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T H E
P R E F A C E.

TO fit down with meekness and resignation, under a sense of those calamities which are the common lot of humanity, is the best evidence we can give of our wisdom, and the strongest proof of our confidence in the Deity. But to remain senseless and supine under the assassin hand of the depredator—to submit, with humble silence, to the invasion of our property, or the perversion of our laws, becomes neither the spirit of a man, nor the dignity of a christian.

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Distinguishing, therefore, between the objects which justly call up our resentment, and those which operate under the will of Providence, as a check upon the exorbitant passions of our nature, I consider it a duty incumbent upon me to state, in the plainest terms, a transaction as disgusting as it would be dangerous, were it suffered to become a precedent.

In law—and of which *ARBITRATION under a Rule of Court* constitutes a collateral branch—nothing can be more fatal to the safety of our persons and property, than the introduction of doctrines subversive of those fundamental rules, which form the basis of our established jurisprudence—for while they impede the regular administration of justice, they virtually deprive us of the blessings of a civil government.

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The following CASE not only furnishes a striking example of the kind, but shews the danger of submitting the decision of hereditary right, to the whim or caprice of any one person, however high in public esteem, or deep in ability. The legislature have wisely provided against this evil, by the establishment of Juries; and I am convinced, that whoever seeks redress in a more summary way, is not only an enemy to himself, but to the community at large, by encouraging a mode, not *very* consistent with the Spirit of our laws—and in many cases productive of fresh animosity and litigation.

Were it possible to derive *impartial* justice from the breast of one man, a verdict might with much more facility pass from the Judge, who has greatly the superiority of a Jury in point of legal knowledge. But experience
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convinces us, that *strict* impartiality is not an ingredient of the human heart. Few men exist who are not the dupes of some partial bias, which stimulates their actions, and blinds their judgment. By this they form a favourite opinion of their own, and steadfastly adhere to it, in spite of reason, of argument, or of fact.

But when a matter is left to the determination of *twelve indifferent persons*, this local prejudice loses its effect. The caprice of one private opinion, is balanced by that of another. Each man feels a diffidence of his own discernment; he dreads the shame of being detected in a partial design, and readily embraces that one, uniform, deliberate opinion, which results from the evidence immediately before them, and forms the purest and most
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impartial adjudication, that any human systems have yet been able to produce.

REFERENCE to a *sole* Arbitrator, is precisely the same as trying a cause *without a jury*. And if the number of Arbitrators be encreased to three, or five, the objection still remains, since one person eventually determines for the whole. To convince the public of the danger of trusting to arbitrations under any form, and to recommend them upon every arduous occasion to abide the issue of a trial by their peers, is the object of the present publication. I am not, however, to flatter myself that it will pass without censure. While some are forward to impute to it the gratification of implacable resentment, others will contend, that the property was of small value, and not worth the expence and trouble of defending. But such criticisms are below *my* notice. They neither

refute arguments, nor alter facts. The value or importance of the spot is not in question—it never was an object with the proprietor. The man of spirit does not measure the injustice by the nominal damage he receives. He considers the principle upon which it is founded. He resents the attack in proportion to the malice which gave it being; and while he delivers up the fugitive as an example to society, he rejects with indignation every offer of pecuniary gratification.

FACTS

F A C T S
RELATIVE TO THE
LITIGATION
CONCERNING
FAREHAM QUAY.

PRIVATE injuries, resulting from malignant combination, and oppressive measures, exercised under official tyranny, become objects of public enquiry and resentment, in proportion as the rights of the subject, and the peace of Society, are endangered by them. If this maxim be true, which appears to form the basis of our freedom and security, little apology need be made for the present publication; since it reprobates a stretch of delegated trust, as dangerous to universal, as to individual property.

Offenders of superior rank, too often pass with impunity; though the consequent injuries are serious and alarming. And yet, while the virtue of the people, and the spirit of the constitution, afford such ample means of redress, we can only blame the want

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of

of perseverance in the injured party, for suffering them to escape. Men, indeed, dignified by exalted station, or intoxicated with power, frequently impose on the credulity of some, and terrify others into a tame submission to their will; whilst those of inferior authority, by craft and contrivance, blind the eyes of the unwary, and poison the minds of their associates and friends. But when the appeal is openly submitted to the candid public, no sophistry can influence the impartial scale, which preponderates only with the cause of Truth.

The story commences as early as the year 1781, soon after the re-passing an act of parliament for widening and repairing the Turnpike Road leading from Chawton Pond, in the County of Southampton, through Wickham and Fareham, to the Town of Gosport. This act, (in all cases under the government and controul of the General Turnpike Act) delegates authority to Trustees therein named, or any *five* of them, “ to widen, or divert, turn, shorten, “ vary, or alter the course or path of any part or “ parts of the roads comprised in this act; and that “ any variation of road may be made through any “ private grounds or hereditaments, *first making satisfaction to the owners thereof, and persons interested* “ *therein*, for the damage they may thereby sustain.” But this act does not extend “ to the taking in any “ land that is a garden, or orchard, adjoining to any “ dwelling-house, or any (a) yard, park, paddock,

(a) Part of the land taken from Mr. Barfoot comes under this description.

“ lawn,

“ lawn, or ground adjoining to the front of any
 “ capital messuage, or planted walk, or avenue to a
 “ house, or any part thereof, without the absolute
 “ consent of the proprietors thereof.”

It unfortunately happened, that a certain part of this turnpike, which passes over a causeway and bridge at the southern extremity of the Town of Fareham, was much too contracted for so populous and public a highway. It was so narrow, particularly in one place, that two carriages could not in safety pass each other; wherefore the Trustees, upon a view of the premises, very judiciously proposed to widen and enlarge it, by taking in some of the adjoining mudlands, the property of Sir William Benett, of Fareham, and Peter Barfoot, Esq.

The Bishop of Winchester being Lord of the Manor of Fareham, (*b*) is, by a certain custom, which
 has

(*b*) The right of the Bishop of Winchester, as Lord of the Manor of Fareham, formerly extended over the nine following tythings, viz. Camisbishop east and west, now called Cams, Puxhold, Denmeade, Crockerhill, Catisfield, North Fareham now Roche Court, Abshott, Brownwick, and Beddenham, exclusive of the Town of Fareham. But before the restraining act of Elizabeth took place, Camisbishop or Cams, Denmeade, Catisfield, North Fareham, Abshott, Brownwick, and Beddenham were all sold off and alienated; having been purchased by the Earl of Southampton, and others, with all manerial rights and privileges whatsoever; so that of this manor, there only remained to the Bishoprick, the two tythings of Puxhold and Crockerhill, with part of the Town of Fareham. But the greater

has obtained time immemorially, obliged to find timber to repair all the sluices and bridges within the said manor. And the bridge, in the centre of the causeway, being *supposed* of this description, and very much out of repair, it was prudently determined, by

part of Fareham is either held under the manor of Cams, or under the Hospital of St. Cross, so that what remains to the Bishop, is of no great extent, nor does it include more than one third of the inhabitants.

As to the Bishop's manerial right, set up and claimed over the land which is the subject of this disquisition, we will give it its fullest scope. The King's highway, leading from Fareham to Gosport, now made a turnpike, runs in the direction of north to south. The lands on either side the road, at the spot in question, have been represented as *within* the Bishop's manor, *at this day*. But the fact is, that the *eastern* side of the road, except where *freehold* intervenes, is within the manor of Cams, as appears from incontestible evidence, deduced both from the court rolls and records of the manor, as well as from personal usance; nor have the Bishops of Winchester, for several centuries past, claimed any right here, until the present dispute came forward. On the *western* side the road also, at the place in question, the Bishop's right, *as Lord of the Manor*, is equally unfounded. What he holds there, consists only of a marsh, of about four acres of land, with a small cottage in front, which adjoins the road over what is called Fareham Quay. These premises are part of his Lordship's demesne lands, which constitute a *freehold* in himself, and relate in no shape whatever to his manerial right; besides, being disposed of on a lease for *three lives absolute*, he cannot exercise or claim any authority or privilege there. Nor do the holders of the lands, at or near this spot, submit to any custom or service to the Bishop, *as Lord of the Manor*. And the tenement immediately adjoining the Bishop's marsh and cottage, is copyhold, under the manor of Cams, and pays a quit-rent to the Lord of
that

by the trustees, to apply to the Bishop of Winchester, to request his Lordship would allow timber to repair the bridge, at the same time that the improvement of the road was going forward.

This application was made in the life-time of the Rev. Dr. Thomas, the late bishop; who not being
fond

that Manor, of two shillings per annum. The mudlands in question, on the *eastern* side of the highway or turnpike road, are, as was before observed, situate within the manor of Cams; but so much of them as were purchased by Mr. Gringo, and devolved by will to the present owners, were not purchased subject to any controul, or to the exercise of any authority of the Lord of the Manor; because all right and title of the Lord of the Manor, was sold with them, as the deeds of conveyance clearly express.--- Hence it becomes obvious, that *all claims* set up by the Bishop of Winchester *to this spot*, are vain and nugatory. Having had recourse to a gentleman who was for thirty years together possessed of a patent place under the Bishop of Winchester, and having inspected all the records and papers, both public and private, which have from time to time fallen into his hands, I am enabled to state these facts with more precision than almost any of his Lordship's present officers. I therefore pledge myself for their authenticity, and am ready to prove them.

It may not be altogether foreign to the subject, should I here premise, that it is no uncommon thing with *tenants for life*, not *precisely to know* the customs and extent of those estates, which fall to them by *chance* or *accident*. It is on this account we so often find the claims of such persons carried far beyond the line of right or reason. Thus, the Bishops of Winchester, for a considerable time past, have introduced the custom of cutting

fond of encreasing the perquisites of his (c) woodward, or rather having doubts whether the bridge was within the limits of his jurisdiction, would not comply with the requisition of the trustees. A view was in consequence taken of the premises, and the sluice, upon enquiry, was found to be the *boundary* of his Lordship's demesne lands, and was erected for the purpose of draining off his marsh, which lies contiguous to it, and is subject to be overflowed by sudden falls of rain.

timber for sale, which grows upon the waste lands within the manor; notwithstanding there does not appear to be any legal pretence for such a procedure. On the contrary, they are *restrained by law*, from the *exercise* of that power. Being merely *tenants for life*, under a presentation from the King, they have no license whatever to impoverish the estate, by alienating any part of the land, or by disposing of the timber. It is a fact, established by ancient usage, and confirmed by statute law, that no timber shall be felled upon the WASTES of any episcopal manor, *held under free and ancient socage*, as the Bishop of Winchester's manor of Fareham is; but for the purpose only of keeping in repair the demesne estates, together with all bridges, sluices, ponds, and highways appertaining to such manor. The authorities of all the great Law Lords, who have treated on the subject, confirm this doctrine; and it would be well were leaseholders to put a stop to customs of such pernicious tendency. I may perhaps, at my leisure, more fully elucidate this subject, and lay before tenants in general, a proper line of conduct to be pursued for this purpose,

(c) The lop and top of all trees, felled by order of the Bishop, are, by a long established custom, the perquisite of the woodward.

A fe-

A second application, therefore, accompanied with a representation of these facts, is said to have had the desired effect. The repairs of the bridge and sluice were forthwith put in hand, under the management of Mr. Mant, his Lordship's then woodward, and of Mr. Bargus, one of the trustees of the turnpike road.

Mr. Bargus (*d*), and Mr. Mant, now went hand in hand. They needed not the clauses of an act of parliament to direct their judgment, or to enlarge their zeal for the public good (*e*). Private property was no longer a consideration of moment. They seized upon the adjoining mudlands without ceremony, and converted what part of them they pleased to the public use, without once resorting to the owners for their approbation, or considering the injuries they were likely to sustain by it.

Sir William Benett, indeed, had the cold compliment, paid him, that he might look at the land, *after*

(*d*) This *distinguished gentleman*, in almost every instance, was chairman and manager of the meetings.

(*e*) When the conduct of these gentlemen was afterwards arraigned for seizing upon this land without consent of the owners, or of calling in a jury to ascertain its value, they excused themselves under pretence of having been hurried into it *by their zeal for the public good !!!*

it was staked out; and I believe they had *modesty* enough to set back some of the stakes, which, even in his *good natured* opinion, exceeded all moderation or decency. But the approbation of the *other proprietor*, who lived at some distance from the spot, was of no importance. He was never once consulted on the occasion, though a trustee under the act; nor did he so much as hear of the steps they had taken, until some months after the encroachment was fully completed.

It must here be premised, that the road, before this alteration took place, was in one part only fifteen feet wide; but these liberal minded friends of the public cause, had now extended it to *thirty-eight feet and upwards*, although the legislature *positively* directs, "That no turnpike road shall in any place exceed thirty feet in (f) width."

To a man of less discernment than Mr. Bargus, such an obvious violation of the statute, would have appeared highly improper; and directed an immediate compensation to the injured party. But more exalted views occupied his mind, and suggested the contrivance of a plan, which, if once accomplished, would immortalize his name, and wipe away the stigma formerly cast upon it, "*That he meant to injure the Town of Fareham* ;"

(f) See General Highway Act, page 23.

when,

when, in truth, he only wished to suppress *athletic sports*, as a means to *preserve* the *constitutions* of the *peasantry*, and to secure the *peace* of the neighbourhood !

Influenced by similar motives, and looking forward to the immense advantages that might accrue to the Town of Fareham, by the *long foreseen commercial treaty*, provided a *free quay* could but be established for public use, he wisely considered that this acquisition might easily be obtained, under colour of the turnpike act, by widening the road to a sufficient extent to answer *both* purposes at (g) once. The thought was ingenious, and dignifies the mind that gave it birth. It was put into immediate execution. The quay, in *addition* to the road, reared its head above the seas, and now invites to *free* and universal commerce !

To form a competent idea of the business, it will be necessary to state a particular of the two estates upon which these encroachments were made, and which, by that means, have been materially injured and reduced in their annual value.

One of these estates is called Dock, Dock-yard, and Quay Close, containing six acres, upon which stand a mansion house, with court yard, coach house,

(g) And yet the act of parliament expressly declares, that the turnpike road shall not be encumbered, and directs a fine of forty shillings to be levied upon all persons offending in this way. See Gosport Turnpike Act, page 150.

and

and stables, besides several dwelling houses, and other buildings. This estate was purchased into the family of the present owners, in the year 1682, by Mr. Roger Gringo; from whom it devolved in legal succession to his grandson, the late John Gringo, Esq. of Fareham; who carrying on the business of a merchant, in a very extensive line, erected storehouses, and other conveniencies, to facilitate the same.

In the early part of his life, there was no regular quay at Fareham. Ships resorting there with merchandize, were obliged to lade and unlade their cargoes upon the strand or sea shore, subject to injuries from high tides, and of depredations of various other kinds; and yet all persons who placed their wares upon those shores, were obliged to pay Mr. Gringo wharfage for the same. But finding the resort of shipping considerably encrease, he determined to erect a large and commodious Quay for their accommodation, as well as for the improvement of his estate, and for the advantage of posterity. This undertaking he compleated at a great expence; the rates of wharfage were regulated and established; and he continued in the quiet possession of the same, receiving wharfage, as well on the sea shore adjoining the highway leading to Gosport, as upon the quay he had thus erected, during the whole residue of his life, without molestation or impediment of any kind.

Shortly after the erection of this quay, the western extremity of which abutts against the high road, Mr.
Gringo

Gringo considered, that the mudlands in the front of it, over which the sea flowed at every tide, being private property, and held under a grant from the Crown, were in the possession of persons who might at any time enclose the same, and shut him out from the benefit of the tide, and by this means prevent more than one vessel at a time from ranging up to his (b) quay; he therefore purchased two acres of the mudlands, which immediately adjoin to the above-mentioned estate, and extend all the way in front of the quay, storehouses, and other buildings, from the side of the common highway leading to Gosport, to the river or channel leading to Portsmouth Harbour, of one Mr. Franklin, the then possessor, who legally conveyed the same to him and his heirs for ever, by deed of lease and (i) release, in the year 1737.

Upon

(b) It is here necessary to remark, that Mr. Gringo's estate of Dock, Dock-yard, and Quay Close, was provided with docks for the building and repairs of shipping. The boundary of this estate towards the sea, was therefore of the highest importance; and for that reason land marks were kept up to shew the extent of it towards the river or channel, covering and preserving a line from thence to the highway, or turnpike road, which leaves sufficient room for one vessel to range up within the line of the sluice or bridge belonging to the Bishop of Winchester, all within which is Quay Close estate; and upon part of which this encroachment is made, as well as upon the mudlands purchased of Franklin.

(i) As the title deeds of both estates come forward in the evidence, it were needless to particularize them here. All that

Upon the death of Mr. Gringo, these estates, in the situation above described, devolved by will to the present owners; who have continued in the quiet possession of them, receiving, either by themselves or tenants, all rates of wharfage, and all other immunities whatsoever, thereunto belonging. The quay was let, separate and distinct from every other part of the estate, to Mr. Corte, of Gosport, for twenty-five pounds per annum; and after his term expired, they might have had a tenant for the same at the advanced rent of thirty pounds per annum. But at this time the above encroachment took place. The turnpike road was widened upon the very lands which form the western extremity of these two estates; the road has since been used both as a turnpike and a free quay, and persons indiscriminately suffered to ship and unship their goods free of expence; the natural consequence of which has been, that the original quay was almost immediately abandoned, and the value of it reduced to less than ten pounds per annum, solely by means of this depredation.

Mr. Barfoot, as was before observed, living at a distance from the spot, knew not of the evil tendency of these transactions, until his tenant, some time after, came to pay his rent, and then complained of the injury and loss he every day sustained, by means of

is now intended, is to impress the reader's mind with a proper idea of the facts, as a ground whereby to judge of the subsequent conduct of the trustees.

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the late encroachment. Astonished at the representation, he went immediately to Fareham, and found the premises exactly as described; when, with a warmth of feeling that is supposed to animate every insulted Englishman, he resorted to the first *public* meeting of the trustees, to demand satisfaction for the injury done his quay, and to require a proper compensation for his land, which they had illegally taken, without either his knowledge or consent!

The trustees, after recovering from an involuntary pause, which an internal conviction of their own error appeared to furnish, turned the charge upon their acting clerk, of whom they affected sternly to demand, *Why he had not applied to Mr. Barfoot for his (k) consent?* The clerk, apparently as much confounded as his masters, replied by saying, *He THOUGHT he HAD!* But when the matter came to be explained, it turned out that he had only applied for leave to take in the corner of a garden belonging to Mr. Bar-

(k) We may here remark, that the trustees, by demanding of their Clerk, "why he had not applied for Mr. Barfoot's consent," publicly admitted and acknowledged the land to be his property. But how this is to be reconciled with their future declarations and proceedings, I am at a loss to conceive. They afterwards affirm, "That they *never* admitted the land to be the property either of Sir William Benett, or of Mr. Barfoot; nor ever *applied* for their *consent*."—Mark the sequel.

foot,

foot, in another part of the road, which he readily granted them; but for which they have never yet, though they *promised*, made him any kind of compensation, *unless their subsequent conduct* can be construed into an equivalent!

After the first effects of this application had subsided, both trustees and clerk were forward to acknowledge, *they had done wrong!* They professed, however, not to have done it intentionally, nor to have foreseen, that widening the road, would have been productive of the injury complained of; but since it had, they would, *at their own expence*, prevent a continuance of it. With this apparent view, they ordered their clerk, Mr. Bedford, to circulate hand bills through Fareham and its vicinity, which he immediately complied with, strictly forbidding all persons whatsoever, under a prosecution in the pains and penalties provided by the act, from laying any merchandize, commodity, article, or thing whatsoever upon the sides of the turnpike road *now* called Fareham Quay; and from using it in future, in any respect as a wharf, for shipping or unshipping goods.

Satisfied with this, Mr. Barfoot retired; and of course concluded, that his tenant was to be secured in the customary emoluments of a Quay, for which an adequate rent was to be paid, and in the erection of which, his ancestor had expended so considerable a sum of money. A very short period, however, convinced him

him of his error, and of the general instability of verbal engagements. 'Tis true, the hand bills were posted up, and distributed; but when complaints were made that little or no attention was paid to them, and that the same use was now made of the road for shipping and unshipping goods, as before the hand bills were issued, and that the grievance existed in as large an extent as ever; no attention was paid to these complaints; the pains and penalties prescribed by the act were dispensed with; the injuries before urged were augmented; and the remonstrances of the injured party turned into ridicule, by the very persons who had so lately, and so seriously *pledged their honor* to put a stop to the injustice!

Hence it became necessary to make another application to the trustees, at a *public* meeting, to demand why their engagements had not been fulfilled; and why the tenor of the hand bills had not been enforced? Mr. Bargus, the chairman and champion of the party, undertook to reply. He insisted that Sir William Benett had given his *consent* to the erection (1); and that therefore, as *he* was joint owner of the estate, they were warranted in having acted under that consent. Besides, he had heard the land belonged to the Bishop of Winchester, or to the inhabitants of Fareham, and therefore it was not in the power of the trustees to prevent the use that was now made of it.

(1) A declaration the reader is particularly requested to bear in memory.

Mr.

Mr. Barfoot, aware that some such mean and disingenuous evasion was intended, told them, in plain and positive terms, that the land was HIS property, and DID NOT BELONG either to the Bishop of Winchester, or to the Town of Fareham. But if they had REALLY any pretensions of that kind to set up, he would, to convince them of the justice of his claim, produce, at their next meeting, the title deeds by which he held the estates, on condition, that they would, on their part, produce what title *they had* to set up against him.

This proposal was unanimously acceded to; and at the next meeting, Mr. Barfoot not only produced his writings, but generously delivered an abstract of them into the hands of the clerk, for the inspection and use of the trustees. He then requested to see the title on which the trustees founded the claim of the Bishop of Winchester, or of the Town of Fareham. The clerk, Mr. Bedford, got up, and said they had no title deeds whatever; but that Mr. Bargus, not being able to attend the meeting, had just sent a note, stating, "That one John Green, and two or three other
"elderly persons of Fareham, could remember goods
"to have been landed upon Fareham Quay for many
"years past;" which was all they had to adduce on the occasion (*m*). Upon this, the trustees present,
una-

(*m*) It is somewhat remarkable that Mr. Bargus, after setting up the Bishop's claim, and acceding to a determination of right,
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unanimously declared it to be their opinion, " That
 " the land upon which the road and quay was widened,
 " was the estate and property of Sir William Benett
 " and Mr. Barfoot, and that an adequate compen-
 " sation ought to be made them for the same." The
 trustees also deliberated upon a sum that should be of-
 fered, and asked Sir Wm. Benett what he thought was
 the value of the land? Several sums were proposed
 by the different persons present; but not being acceded
 to on the part of the proprietors, it was agreed to
 postpone the matter till the next meeting, when the
 value should be put into a way of being fairly ascer-
 tained, and finally settled.

Perfectly satisfied with these assurances, Mr. Bar-
 foot did not trouble himself to make any further ap-
 plications; not suspecting the trustees would falsify
 their present engagement, or invent new pretences to
 avoid giving him redress. But after several meetings
 had been held, and no further notice taken of the

by the production of the title deeds on either side, should, on the
 very day appointed for that purpose, carefully absent himself;
 and to keep the dispute alive, send this ridiculous note, unauthen-
 ticated or established, by any thing more than his own *ipse dixit*.
 But even admitting this assertion to be true, that goods had been
 formerly shipped from the road; yet, it must be obvious that
 the property was altered, since the road had been extended from
 its original boundary, to near twelve feet upon the land be-
 longing to Mr. Barfoot; and that the landing place or quay now
 used, was *actually* that part of the road lately encroached upon
 his estate, *and no other*.

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matter;

matter; and after writing to the clerk, without being able to obtain an answer, he, in the month of January 1784, which was six months at least after his title-deeds had been produced, wrote again to Mr. Bedford, clerk to the trustees, stating, "That unless immediate satisfaction was made for the lands encroached upon, as well as for the injuries done to his quay, he should, if the delay arose, as he feared it did, from a wilful design of the trustees to harass and perplex him, as well as to alienate his property, immediately pull down and destroy the encroachment, as far as it extended upon his estate. But, if the delay arose from any doubt they might yet have as to his right, he would either saw a post, or remove a stone, for the purpose of founding an action, in order to try it fairly in a court of law."

To this proposal, Mr. Bedford, in his official capacity, on the 4th of (n) February, 1784, wrote the following answer.

S I R,

"Yours of the instant I found at Fareham, and as you desired, I laid the same, with your

(n) The trustees present on this occasion were, RICHARD BARGUS, J. Marshall, R. Maidman, Peter Thresher, John Thresher, James Lys, Mark Robinson, and William Benett. Their signatures stand upon the turnpike books, authorising and confirming the proposals of compensation contained in this letter. The reader will remark, that Mr. Bargus has since denied ever being present at any meeting, where a compensation was proposed, or Mr. Barfoot's right acknowledged. But "*the ways of some men are past finding out.*"

"former

“ former letters, before the trustees, who, with the
 “ approbation of Sir William Benett, made the fol-
 “ lowing order, viz.

“ The trustees present, having taken into confi-
 “ deration two letters from Peter Barfoot, Esq. to
 “ their clerk, respecting the land near Fareham town
 “ quay, taken in and laid to the road to widen the
 “ same there, the said trustees, with the approbation
 “ of Sir William Benett, joint owner of the late Mr.
 “ Gringo’s quay, propose, That posts and rails shall
 “ be put up, by and at the cost of the trustees, so as
 “ to enclose and pale off all the land upon the said
 “ quay against the sea, as exceeds the distance of thirty
 “ feet, from the dwelling-house opposite. Or, if that
 “ should not be approved, that a jury be summoned,
 “ and returned by the sheriff, to set a value on the
 “ land so taken in, *the same as if such value had been*
 “ *ascertained* PREVIOUS (o) *to its having been taken in as*
 “ *aforesaid.*”

“ I hope these offers will likewise meet your con-
 “ currence; indeed, had the trustees foreseen the
 “ necessity of taking this land by a jury, you could
 “ *then* only have been paid in the way they now offer.

(v) Here is a full acknowledgment of the illegality of their proceedings in the first instance. Had they conformed to the letter of the law, and either obtained the approbation of the owners, or procured a valuation of the land by a jury, the whole of the subsequent vexation and expence had been prevented.



“ But under the acquiescence of Sir William Benett,
 “ preserving the line to your quay, and supposing and
 “ believing the other land to belong to the Bishop of
 “ Winton, the stone facing was extended and put
 “ down in the way it now stands. You’ll now please
 “ to consider which proposal you think most advan-
 “ tageous, that of having posts and rails put down as
 “ proposed, preserving a road of thirty feet the whole
 “ extent of the quay, or having the satisfaction of a
 “ jury; and you will favour me with your answer,
 “ that I may communicate the same to the gentlemen
 “ at their next meeting.

(Signed)

“ JAMES BEDFORD.”

To this letter Mr. Barfoot immediately replied,
 That he should by no means be satisfied with barely
 posting and railing off the land, since he had too much
 reason to fear, that mode would turn out equally in-
 efficacious with the hand bills; and therefore should
 prefer the sheriff being called upon to summon a jury,
 for the purpose of setting a value on the land, and
 ascertaining the damage he had sustained.

With this view, Mr. Barfoot and Sir William
 Benett both attended the next turnpike meeting. It
 was then observed, that the expence of calling in the
 sheriff and jury, would amount to thirty or forty
 pounds at least; to save which, Mr. Barfoot and Sir
 William offered to leave it to the reference of any
 four

four disinterested gentlemen, who should have authority, in case of non-agreement, to call in a fifth, and his award to be final. This proposal was acceded to on the part of the trustees, with an amendment from Mr. Bargus, *That no gentleman, who was a trustee of the road, should act as an arbitrator.* An order to this effect, was made in the turnpike (p) books; and the arbitrators were named on both sides, viz. Mr. Cole, a barrister at law, and Mr. Dinely, a solicitor, on the part of Mr. Barfoot; and Messrs. Arnaud and Grant, grocers, at Portsmouth, on behalf of the trustees. Soon after this nomination, the clerk, in a very unbecoming manner, got up, and *opposed* the choice made by the trustees, by observing, they were not upon a par with the other gentlemen, who were both lawyers. Upon this, two other gentlemen were named in behalf of the trustees, viz. Mr. Watson, a barrister, and Mr. Thomas Binstead, an attorney. To this second nomination, Mr. Barfoot, for the sake of peace, acquiesced; notwithstanding one of the gentlemen was a trustee of the road, and consequently, under Mr. Bargus's own motion, *ineligible to the office.*

An order was now to be drawn, as a ground for the reference; and to which all parties were to sign their names. Mr. Bedford, the acting clerk, having

(p) This order stands upon the books, signed William Benett, John Upton, Peter Barfoot, Francis Lys, James Lys, RICHARD BARGUS, Richard Maidman, George Fall, John Marshall, Samuel Atkins, — May 6, 1784.

retired for this purpose, soon returned with a draught of it; but, to the astonishment of Mr. Barfoot and his friends, it was expressed in such terms, as to give the referees a power to enquire into, and *try the validity* of his *title deeds*, as well as to set a value upon the land! a power greater than was vested, *by the act itself*, in the sheriff and jury. Mr. Barfoot, stung at the mean and ungenerous advantage attempted to be taken of him, flung out of the room, and declined all further remonstrances with them.

It was not until the 17th of February 1785, that he pursued any further measures for obtaining his right. He was willing to try what patience would effect; or what overtures time might produce, through the medium of the *easy, good-natured*, Sir William Benett. But in these expectations he was likewise disappointed; and had the mortification at last to find, that nothing but violent steps was likely to bring the trustees to their senses, or reinstate himself and tenant in the quiet possession of what had been surreptitiously taken from them.

A public meeting of the trustees having been announced for the above day, Mr. Barfoot commissioned his attorney, Mr. Marett, of Waltham, to attend, for the purpose of obtaining, if possible, a final and direct answer, whether they meant to do him justice or not? and to demand a compliance with the offer they had made by letter from their clerk, to have the
dispute

dispute settled by the sheriff and jury, agreeable to the order of the 4th of February, 1784, entered upon the turnpike books. The trustees affected to have no objection; but thought it would be proper, as the dispute had gone so far, to warn a *special meeting for the purpose*. This was agreed to, and an order was drawn up by Mr. Bedford, the clerk, for the purpose of investigating the business; but in unison with his former conduct, and truly *consistent* with his situation as the *servant* of the trust, he still framed the order in an ambiguous stile (q), so as to give the referees a power to *try the title*, as well as to *value the land*. The impropriety and indecency of the measure being exposed by Mr. Marett, was at last given up.

When the matter came before the special meeting, which was holden on the 5th of May, 1785, Mr. *Bargus in the chair*, it was declared, by that respectable character, " That the trustees had come to a final determination, not to abide by any order, but what should authorize a full investigation of Mr. Barfoot's title deeds, before any compensation should take (r) place." And as a plea for their conduct, he

(q) It may not be amiss to remark by the way, that when Mr. Bedford was afterwards engaged in conversation with his employers, he was overheard to say, by a trustee present, *That he framed the order so ambiguously, on purpose!*

(r) The resolutions of this meeting are honoured with the signatures of the following trustees, RICHARD BARGUS, M. Robinson, senior, M. Robinson, junior, George Fall, Wm. Player, P. Henville, William Thresher, Philip Titcher.

urged, "That if there were any legal title deeds to the land in question, why should Mr. Barfoot decline having them scrutinized?" Mr. Marett replied, that so far from fearing or declining an investigation of the title deeds, if the trustees would be at the expence of such investigation, it should come forward; and if his client did not succeed in establishing his claim, he would agree that the whole expence of the enquiry should fall upon him.

This proposal, fair and equitable as it was, could not induce an acquiescence on the part of the trustees. Terms were not to be prescribed to them! They insisted that the land was the Bishop's, or vested, by prescriptive right, in the inhabitants of Fareham. If not, it was more likely to belong to the Mayor and Corporation of Portsmouth, than to Mr. Barfoot!

Nothing now remained, but to offer the former suggestion of Mr. Barfoot, that if they seriously doubted the validity of his claim, and were disposed to meet it in a court of law, he would remove a pile, or a stone, that an action of right might be founded without acrimony, and come forward without spleen. But, no; this would be acting *unlike themselves*; it would *derogate* from the *firmness* of their *usual* proceedings; and betray a want of *liberality* in the execution of their plan.

In this dilemma, what steps was an injured man to take? Forbearance had been tried in vain; and all
remon-

remonstrances had proved abortive! Recompence was refused, and a deaf ear turned to every mode of complaint! The pretended title of the Bishop of Winchester had often been insisted upon; and was on many occasions used to give *sanction* to that species of conduct, which, for want of it, would have appeared barefaced and insufferable. And as the present Bishop of Winchester, about this time, did his chaplain, the Rev. Dr. Chelsum, the honor of a visit at Droxford, Mr. Barfoot thought it a fit opportunity to wait on his Lordship, for the purpose of explaining the nature of the dispute, and to express a desire of submitting his claim to the decision of his Lordship's candour; or to put it on any footing that would prevent violence and litigation.

He accordingly paid a visit to his Lordship, and stated, in a summary way, the particulars of his claim. He represented, also, the unfriendly proceedings of the trustees; and the shelter they had taken, under a pretended title of the Bishop of Winchester. His Lordship heard the complaint with patience; and, with a generosity that did him honour, declared, "That as the dispute began before he succeeded to the Bishopric, he would not interfere in the matter on either side;" or words to that (s) effect.

(s) It must here be remembered, that this dispute commenced in the life-time of the late Bishop, who, dying soon after the repairs of the sluice were ordered, was succeeded by the Hon. and Rev. Brownlow North, brother of Lord North.

In

In this stage of the business, Mr. Barfoot found himself quite at a stand. His property had been greatly injured, his estate lessened in its value near twenty-five pounds per annum, his land forcibly taken away, and converted into a noble road, of which the public hourly felt the advantage. He did not like the idea of pulling it to pieces, and of depriving them of an acquisition, which at once afforded convenience and safety. And yet, to be duped in this way, was what no man of spirit, in justice to his family or feelings, could tamely submit to. He was not above consulting his friends in the law; he took the advice of several, and all of them concurred in his own opinion, That, as Sir William Benett, the joint owner with him, had, in a limited degree, acquiesced in the matter, he had no immediate redress by law, nor could, of *himself*, found an action against his adversaries, without danger of a non-suit, a circumstance of which his enemies had been previously informed, and was the true motive why they declined the proposal of removing a stone or pile, for the purpose of founding an action, to bring the matter fairly to an issue. He therefore, in the last extremity, when no other remedy was left, and after every expedient for redress had failed, determined to pull down and destroy the encroachment which had been erected upon his land, to the annoyance of his estate, and to the prejudice of his quay.

Previous to the actual putting this determination in practice, Mr. Barfoot, on the first day of June then
next

next following, had an interview with Sir William Benett, the joint owner with him in the estate, who was then at his house on a visit. He acquainted him with the resolution he had formed, of removing the nuisance; and pointed out the necessity of so doing. Sir William, not only *approved* the project, but heartily *joined in it*; and agreed to depute some persons of Fareham to meet on the quay the next morning, for the purpose of pulling it down. Mr. Barfoot, in consequence, engaged two labourers, and went the next morning, the second of June, to Fareham, fully expecting to find the assistance that had been promised him. But, Sir William relented. His heart failed; he had consulted with, or was consulted by, *some of his friends*. In short, instead of the assistance he stipulated to give, he sent a polite card, stating, "*That he did not approve the proceeding!*"

Mr. Barfoot, not at all dispirited by this defection, determined to proceed with the strength he had. He immediately set the labourers to work. The first thing was to ascertain the boundaries of the ancient road and quay, which, by digging holes through the surface of the new-made ground, was at last discovered, by the appearance of the stone facing of the old road next the sea, which was found in its original state, and acknowledged to be so, by a number of spectators who had assembled on the occasion. The whole of the encroachment was then regularly staked out, and amounted to one hundred and ninety-six

six feet in length, and from eight to twelve feet in width. When this was done, and the facing of the new work partly demolished, Mr. Barfoot returned home, leaving his labourers to finish what they had begun, with orders not to desist, till the whole encroachment was removed.

Soon after he had quitted the spot, Mr. Bargus appeared, with several of his adherents; and partly by threats, and partly by promises, prevailed upon the two labourers to desist, telling them, "If Mr. Barfoot was injured, he had a remedy by law, without pulling the turnpike road to pieces."

Mr. Bargus then convened a meeting of such of his followers as he could get together, to consult what, in the present extremity, was to be done. But they were all panic struck. All were at a loss what to advise. At last, it was discovered, "that they were
"neither lawyers, nor conjurers; and therefore, the
"best thing they could do, was to send for Mr. Bedford, the lawyer, from Portsmouth Common, to
"advise them." Mr. Bargus, for want of an emanuensis, undertook the important task of drawing up the summons, of which the following is literally a copy:

Fareham June 2d 1785

"DR. SIR

"I was this morning informed that Mr. Porter
"by the order (I suppose) of Mr. Barfoot had taken
"down part of the quay I went down and there saw
"to

“ to men taking it down I ordred them to desist. as
 “ Mr. Barfoot had a nother remedy if the ground was
 “ his the men did desist. I shuld be glad to see you to
 “ consult what should be dun.

“ I am your

“ most humble servant

“ RD. BARGUS

“ th wagoner waites for this”

When Mr. Barfoot was apprised of this step, he, on the 6th day of the same month, sent three other labourers to complete the demolition of the quay. But soon after they had began the business, Mr. Justice Bargus again appeared, and, *on his own view*, ordered them into custody; though he was *himself* the projector of the encroachment, and the prosecutor in the subsequent action. He bound the men over to the ensuing quarter sessions, where they appeared, and were discharged for want of prosecution.

Mean while, steps were taken to tie the hands of Mr. Barfoot himself. The trustees, with Mr. Bargus at their head, preferred an indictment against him, at the assizes, and included therein his servant, with the two labourers who were *first* employed; whilst the other *three* passed without notice! This bill, at the next Winchester assizes, was brought before the grand jury, which, to complete the farce, was composed of the prosecutor Bargus, his son-in-law, and some others of the parties concerned, and the bill was found!

found! But, as Mr. Barfoot wished to have the merits of the title brought forward, and was determined, if possible, to have the matter heard fairly out, he traversed the indictment, in hopes of yet being able to institute an action in the Court of King's Bench, against Bargus and others, for a trespass on his property.

Hostilities being commenced, each party had to resort to the best mode of defence. Mr. Barfoot, secured by legal deeds, and backed by an uninterrupted family possession, of the one estate upwards of an hundred and fifty years, and of the other near fifty, could not suppose himself exposed to danger. It was a barrier, he considered proof against every foul attempt upon his property; and having this on his side, he remained perfectly at ease as to the issue, let the matter be contested how or when it may.

The trustees by no means appear to have felt themselves in a similar situation. They were alarmed, and very justly too, at the extent of their temerity. They neither knew how to support the indictment they had wantonly preferred, nor how to defend the action with which they were threatened. Let us then, for a moment, turn our eyes to that singular address and contrivance, which supplied by art, what was deficient on the score of justice.

To facilitate this honorable purpose, they convened a full assembly of all such trustees, as were supposed
likely

likely to coincide with their measures. At this meeting, it was agreed, *nem. con. to stick by each other.* Two objects were proposed, of the utmost importance to the success of their enterprize. The one, was to obtain an opinion of counsel in their favour; under the authority of which they might act with more security. The other, to prevail, if possible, on the Bishop of Winchester, to take an active part in the dispute; under sanction of whose name they might proceed with vigour, and come forward with effect. Applause, of course, crowned the propositions; and Mr. Bedford was directed to bring about these flattering events.

Ever eager in the pursuit of fame, and forward to combat those *double* dangers which yield *double* rewards, time did not lapse in vain! A case was stated, and stated as it *should be* too, to produce *such* an opinion! It granted all they asked, and confirmed all they had done! and, what is still better, it concluded with assuring them, “*That the public fund* MIGHT be employed in their defence!”

It would afford but little entertainment, or information to the reader, to have the case and opinion copied at length. Suffice it to say, that Mr. Bedford, in stating the case, took care to represent, “That the
 “Town of Fareham is situated within a manor, part of
 “which belongs to the Bishop of Winchester. That
 “formerly, (*God only knows when*) a mill, belonging
 to

“to his Lordship, stood upon the side of the high-
 “way, with a quay before it, (*since called Fareham*
 “*Quay*) from which his Lordship’s tenants, and the
 “whole inhabitants of Fareham, had been time im-
 “memorially accustomed to ship off their goods and
 “merchandize, without any charge or expence what-
 “soever. But that this mill had been translated to a
 “more convenient spot; yet, though the mill was
 “gone, the quay remained. For the Bishop, (*whoever*
 “*he was*) when the mill was taken away, caused the
 “road on each side to be raised, and filled in, and the
 “same to be planked or faced with stone against the
 “sea, which formed the same into a *complete (t)* wharf
 “or quay, from whence merchandize continued to be
 “shipped off free of expence—(*though no trading vessels*
 “*could get up to it, for want of water!*)

(t) It is curious to observe, with what singular *uniformity* of
 parts, Mr. Bedford has drawn his case! Here he states, that the
 Bishop of Winchester, when he repaired the road, formed it into
 a *complete* wharf and quay; and in the very next paragraph but
 one, he roundly asserts, that this *complete* wharf, road, and quay was
 so *narrow*, that several accidents had happened by horses and car-
 riages falling over into the sea!!! The same contradictory jar-
 gon runs throughout the whole, which every attentive reader
 cannot but remark with astonishment. The simple fact is, that
 this spot, being part of the King’s highway, and frequently ren-
 dered impassable by the overflowing of the tide, it was found
 necessary to raise and embank the road against the sea, in order
 to pen the water back. Hence it became a convenient situation
 for market boats and wherries, resorting to and from Portsmouth
 and Gosport, to take up and set down passengers, &c. and from
 this circumstance alone it acquired the denomination of “FARE-
 HAM QUAY.”

“ That

“ That though *two* acres of the mudlands, lying
 “ before Mr. Gringo’s house and quay, and against
 “ the turnpike road, had been purchased by Mr.
 “ Gringo of Richard Franklin, the former owner, yet
 “ neither Mr. Gringo, nor his devisees Sir William
 “ Benett and Mr. Barfoot, had ever, to the present
 “ moment, exercised any distinct act of ownership,
 “ nor thought fit to take in or enclose the same; but
 “ that it still continued to lie open, admitted the
 “ water to flow over it at every tide, and ships and
 “ vessels of all denominations were suffered indiscri-
 “ minately to occupy and swim over it, to all the
 “ wharfs and shores by which it was (*u*) furrounded.

“ That

(*u*) Did not Mr. Gringo purchase these mudlands, because
they should not be inclosed? Would not the act of enclosing them,
 have destroyed the very end for which they were purchased?
 Would it not have shut out the water from his quay, and rendered
 the whole wharf and storehouses, erected at an enormous expence,
 of no use in his profession, and of no value to his successors?
 Nay, the condition of the purchase was such, that he could not
 have enclosed it, had he been so disposed. The whole tract of
 mudlands situated at this spot, amounting to five acres, were Mr.
 Franklin’s property; and as Mr. Gringo only purchased two
 acres, Mr. Franklin was aware, that even the enclosing those two,
 would perhaps annoy him or his successors in the use to which they
 might hereafter want to appropriate the remainder; and there-
 fore a covenant was made in the leases, that neither the said Mr.
 Gringo, nor his executors, administrators, or assigns, should
 at any time enclose or turn the same into a saltern or saltwork,
 under forfeiture of the whole premises. And, with respect to
 the free resort of shipping, Mr. Bedford, though possessed of the
 most acute jurisprudential discernment, seems, in this case at least,

“ That the Bishop of Winchester, (*he should have*
 “ *said the trustees*) had lately widened the quay, *because*
 “ *it was so narrow*, that several accidents had hap-
 “ pened by horses and carriages having through fright
 “ gone over into the (x) sea ! The trustees, therefore,
 “ brought the quay out about ten feet farther upon
 “ the mudlands ; but Sir William Benett, the joint
 “ owner with Mr. Barfoot, attended with Mr. Bargus,
 “ and approved of the whole alterations, except at
 “ that end which came against Mr. Gringo’s quay,
 “ and there he ordered it to be set two feet back,
 “ which was complied with. And that Sir William
 “ frequently afterwards came with Mr. Bargus, while
 “ the work was in hand, to see that it was carried on
 “ properly.

“ That after the work was finished, Mr. Barfoot
 “ and Sir William Benett said, their quay was in-
 to have forgot, either by accident or design, that the King, as
 Lord Paramount of the Seas, commands, at high tide as well as
 low, a free navigation to all his subjects, over all lands overflown
 with the seas ; though the soil, to low water mark, may at the same
 time be private property, held under a grant from the Crown,
 and liable to be inclosed at the pleasure of the owner. But when
 the same are actually inclosed, and the seas by that means cease
 to overflow the land, neither King nor subject can afterwards
 break in upon it, without trespass.

(x) A demonstrable proof this, that Fareham quay, in the
 complete state just above described, must have been charmingly
 calculated both for a public road and an extensive wharf, since it
 was so *narrow* that even a single horse or carriage could not pass
 over it without danger of being cast away !!!

jured;

“jured; and Mr. Barfoot insisted upon recompence
 “for his part in it; but as to Sir William, he might
 “do as he pleased. That this recompence having
 “been refused, Mr. Barfoot had cut the land ties,
 “and was proceeding to demolish the whole of the
 “new erection; but that Sir William would not join
 “him in it. That unfortunately for him, he, Mr.
 “Barfoot, had began at the north end, where it was
 “presumed the land was not his property, instead of
 “demolishing the south end, where same abutts
 “against the wall of his own quay. For this reason,
 “they believed he could not justify what he had done,
 “and therefore they meant to prefer an indictment
 “against him, if such step were adviseable,

“That the men employed by Mr. Barfoot, having
 “continued to destroy the quay and road, in defiance
 “of all that could be said to them; and Mr. Bargus,
 “a justice of peace, being present, ordered them to
 “be taken into custody; but upon finding sureties
 “to appear at the quarter sessions, they were dis-
 “charged.

“That they suppose Mr. Barfoot took this step, to
 “prostrate and destroy the quay, because he could
 “not make out any title to his muddy (y) property.
 “But as he had a legal remedy by an action, (*which*
 “*he had not*) could he *alone* justify pulling down,
 “especially at the north end, *where it is presumed it*

(y) A witticism of Mr. Bedford's,

" *can be proved he never could have any possible right,*
 " and after *suffering* it to be erected ?

" That Mr. Barfoot had caused stakes to be drove
 " in upon the quay, and in the mudlands, as far as
 " the channel, to mark out what he calls his land.
 " May the trustees, or who else, remove them ?

" That Mr. Barfoot's attorney had applied for a
 " copy of the warrant, under which his labourers
 " were apprehended ; but they were taken up, and
 " bound over, without a warrant. Was Mr. Bargus
 " justified in having so done ?

" Can the trustees, at their next meeting, properly
 " make out an order, and direct their clerk to pay
 " the costs of defending ANY prosecutions which
 " may be commenced against Mr. Bargus herein,
 " without being liable to an action for maintenance ?

" The next meeting will be the 6th day of this
 " instant July—Pray send your opinion in time !"

How far the statement of this case corresponds
 with Truth and Fact, I shall leave to the feelings of
 Mr. Bedford, and the party who employed him.
 There can be no doubt but it was calculated, as all
such cases are, to obtain a justification of what they
 had done. Acting in a public line, and amenable to
 the

the public whenever called upon, it may be proper to have some plea of righteousness as a ground for their proceedings ! It was necessary too, as an alleviation to their embarrassments, which had sunk them into despondency, and required some invigorating cordial to exhilarate their spirits ! Behold, here it is !

“ *I am of opinion* Mr. Barfoot cannot justify pulling
 “ down or injuring *that part* of the quay, *where he has*
 “ *no title to the ground on which it was built !* And as
 “ the quay was dedicated to the use of the public by
 “ the Bishop of Winchester, *as Lord of the Soil*, and
 “ the additional space widened and filled by the
 “ trustees of the turnpike, and *added to the highway*,
 “ I am of opinion Mr. Barfoot has been guilty of a
 “ common nuisance, and may be punished for it by
 “ indictment.

“ Such stakes as are driven upon the road, I think
 “ the trustees should order to be removed ; but such
 “ as are placed on the mud, I think they, as trustees,
 “ have nothing to do with.

“ As the persons employed in prostrating the quay,
 “ were committing a nuisance in the *presence* of a jus-
 “ tice of peace, and refused do desist in obedience to
 “ his command, I think Mr. Bargus *justifiable* in
 “ ordering them into custody, though without a
 “ warrant.

“ Mr. Bargus being a trustee of this turnpike road,
 “ and having acted in this business as a trustee as well

“ as a magistrate, I think the trustees not only may
 “ order their treasurer to defend Mr. Bargus for what
 “ he has done, but *ought* so to do; *because it will be*
 “ the *public fund*, and NOT THEIR PRIVATE PROPER-
 “ TIES, *which will be employed in such defence*. I am of
 “ opinion they cannot, by so doing, be guilty of
 “ maintenance.

Titchfield, June 14, 1785.

(Signed)

“ J. MISSING.”

With submission to the learned gentleman, whose opinion furnished so much exultation to Mr. Barfoot's opponents, and became the ground-work of their subsequent pursuits, let me ask him, Whether the four points, upon which he commends and approves their conduct, are not wholly founded upon the first position, That Mr. Barfoot had pulled down the quay, where the land was supposed not to be his property? But suppose the land, as it really is, from one end of the quay to the other, to be his property, will not this learned gentleman readily confess, that his whole opinion falls to the ground? Did he not set off with the delusive idea that the land was the property of the Bishop of Winchester, and justify his opinion under it?

Should Mr. Barfoot live to see the issue of the contest, and be able to establish his claim to the land, in spite of every unfair contrivance to prevent it, it shall then be
 seen

seen whether the *present case* be not such, as will justify an application to the court, for an action of maintenance. The transaction demands the enquiry, and as 'tis disingenuous to deal in the dark, I state the design thus early, that those who are concerned may have sufficient time to prepare their defence.

But, to pursue the subject. The trustees were not only sedulous to get *the law on their side*, but were equally industrious to prevail on the Bishop of Winchester to support their measures, and to allure the inhabitants of Fareham, under the specious promise of future gain, to second their endeavours. No decoy, perhaps, by which human nature is entrapped, is equal to that which holds up to view the glare of self-advantage; for while it dazzles the eye both of mind and body, it puts us off our guard, and we fall an easy prey into the snare of our adversary! We must not wonder then, that several interested inhabitants should stand forward, as an example to the rest; or that they professed their new-born zeal to be the effect of warm hearts, embarked in a generous, and in a public cause; a cause too that claimed Captain Bargus for its chief!—His banner was displayed, the drum beat to arms, and all degrees resorted to his standard, under the insignia of confident victory!

Mean while the assiduous Mr. Bedford, with equal ingenuity and candour, addresses the Bishop of Winchester by letter, of which the following is a faithful copy :

5th June, 1785.

“ MY LORD;

“ I am requested, as well by your Lordship’s tenants, inhabitants of Fareham, as by the trustees of the Gosport turnpike road, to inform your Lordship, that Mr. Peter Barfoot, of Midlington, near Droxford, who is joint owner with Sir William Benett of the dwelling-house, store-houses, and quay, of the late Mr. Gringo, near Fareham, last week thought proper to cause the land ties to be cut, and to pull down part of the stone abuttment, or quay; and part of the bridge or arch adjoining the late Mr. Gringo’s quay, put up by the late Bishop of Winton, some time in or about the year 1781, under the direction of Mr. Mant, of Havant, his Lordship’s then woodward.

“ Mr. Barfoot *pretends* (z), that when the late Bishop last repaired this quay and bridge, (over which the Gosport turnpike road to London and Winton leads) the stone facing and bridge were carried out about four or five feet into the mud, over which the sea water, supplying the GREAT MILLS belonging to your Lordship at

(z) Why should he say, Mr. Barfoot *pretends*, when the fact of setting out the road upon the mudland was admitted by all parties?

Fare-

“ Fareham, flows, in order to widen the road there,
 “ which before was *dangerously narrow* (a), for the
 “ more safe passing and re-passing of carriages and
 “ passengers over the same. That the *whole of the*
 “ *mudland* (b) *there belongs to him and Sir William Benett*;
 “ and that by widening of the road over the bridge
 “ and quay repaired by his late Lordship, it has not
 “ only made it more convenient for the public, but
 “ particularly so to your Lordship’s tenants of Fare-
 “ ham, for landing and shipping off their goods, and
 “ thereby made the other quay belonging to them, of
 “ less value than before.

“ Your Lordship’s tenants of Fareham say, they
 “ make no other or greater use of the abuttment or
 “ quay of your Lordship’s, than they have been ac-
 “ customed to do time immemorially. And that Sir
 “ William Benett, when your Lordship’s bridge and
 “ abuttment were last repairing, attended with Mr.
 “ Bargus, a magistrate at Fareham, as a committee,
 “ and as two of the trustees of the Gosport turnpike

(a) And yet, in his case stated for Counsel, he declares
 this road had been raised and formed into a *complete wharf and*
quay, by a former Bishop!

(b) What a barefaced and premeditated falsehood! There were
 only *two acres* of these mudlands, which were purchased of Frank-
 lin, and about half an acre appertaining to Quay Close estate,
 that were ever claimed either by Mr. Barfoot, or Sir William
 Benett! Mr. Bedford, in his case, (see p. 33) has himself stated
 them to be two acres, *and no more*. How then does he reconcile
 this assertion, with the *fact* HE has there stated?

“ road,

“ road, and at the request of Mr. Mant, to superin-
 “ tend the work, and see that it was not slighted.
 “ That Sir William Benett and Mr. Bargus were
 “ with Mr. Mant at the setting out of the work, and
 “ that the former highly approved of same, and of
 “ the widening the road as it till now stood.

“ And that the late Bishop should be at no greater
 “ expence when he was repairing this bridge and
 “ abuttment against the sea in widening the road
 “ there, than he would have been at in new facing
 “ with stone where the old facing stood, the trust-
 “ tees of the turnpike allowed and paid his Lorship
 “ 30l. to defray the expence of filling in the ground.

“ As the prostrating the stone wall, and cutting
 “ away the land ties, will leave the whole exposed to
 “ the sea, which, in a short time, by a heavy north
 “ east wind, and a raging sea, must be washed down,
 “ and the bridge and road over the same, totally de-
 “ stroyed, it is hoped your Lordship will be pleased
 “ to cause a speedy inquiry to be made into these pro-
 “ ceedings, and then give such directions as may ap-
 “ pear to your Lordship just and proper.

“ I am, with all respect,

MY LORD,

“ Your Lorship’s

“ Most faithful humble Servant,

“ JAMES BEDFORD,

“ Attorney, Portsmouth, and Clerk and Treasurer
 “ to the Trustees of the Gosport Turnpike.”

Upon

Upon this letter it will be proper to remark, that Mr. Bedford has, either through the hurry of business, or by some unaccountable and *unintended* mistake, stated the bridge and road to have been brought out only *four* or *five* feet; whereas, in the case stated to his counsel, he has been candid enough to admit they were TEN. He says too, (and at which every man who knows the spot, must shudder at the barefaced misrepresentation) that the quay was carried out, and widened upon the mud, "*over which the sea water, supplying the great mills belonging to your Lordship at Fareham, FLOWS.*" Now the TRUTH is, that these mudlands are situated on the western side of the channel or bed of Fareham river, and form an open plot of land, of about five acres and a half, bounded by the turnpike road, and Mr. Barfoot's quay, and no mill whatever is near the place. The *great Mills* he speaks of, stand at the top of Fareham river, and not on its side, in a direction *due north* from the land in dispute, and at the distance of about three quarters of a mile. But the Bishop had never been at Fareham. He knew nothing of the premises; and therefore this description was as intelligible to him, as any other; at least it was best calculated to obtain the object of the letter, which it really effected, as appears by the following answer from the Bishop;

June 16th, 1785.

" S I R,

" By what I can learn, Mr. Barfoot hath
 " not a *shadow* of right to take the steps which he hath
 " done;

“done ; and which, if there had been any *pretence*,
 “are scarcely *justifiable*, where the *public welfare* and
 “*convenience* are so much concerned (c). It seems to
 “me to be proper that you should consult the princi-
 “pal inhabitants by whose direction you write, and
 “also the commissioners of the turnpike road. I shall
 “be very ready to bear my share with them in the
 “expence of an action, by which I have no doubt but
 “that Mr. Barfoot will be obliged to make ample
 “amends for the injury which he hath done to
 “us all (d).

“I find that you have stated the circumstances
 “*very justly* (e). At the time when this work was
 “done, *no one concerned* had an idea of the land being
 “other than *waste land* (f) ; and Sir William Benett

(c) His Lordship had only heard *one side of the story* ; yet he was
 enabled roundly to assert, that Mr. Barfoot had not a *shadow* of
right ! Yet if he had, it were *unjust* to claim it, since the public
 welfare was concerned.

(d) How delicate then must be the situation of every individual,
 if Mr. Barfoot committed so great an injury, only by protecting
 that property, which had been enjoyed by himself and ancestors,
 for upwards of a century !

(e) It were to be wished we could inform the reader by what
 criterion his Lordship's judgment was regulated, when he disco-
 vered, in the foregoing letter of Mr. Bedford, so *just* and *true* a
 representation of the *circumstances* in dispute !

(f) Why then did the trustees authorize their clerk to address
 Mr. Barfoot, with an offer to pale off the new erected quay, or to
 have the land valued by a sheriff and jury ? See his letter, p. 18.

“ himself

“himself assisted in planning, and in overlooking the
“execution of the work.

“I am, Sir,

“Your humble Servant,

“B. WINCHESTER:

“You will be so good as to direct any time this
“month and the next to me, at Winchester House,
“Chelsea.”

This condescending reply gave fresh vigour to the trustees. Nor can we sufficiently extol the benevolence it breathes, nor enough admire the *strict conformity it bears*, with his Lordship's PROMISES at Droxford (g)! A meeting was now holden at Fareham, to which all classes, both of trustees and inhabitants; were earnestly invited. The letter was audibly read, and the room resounded with the voice of praise—Bargus and the Bishop—for ever! Mr. Bedford went not without the tribute due to his merit; nor without fresh entreaties to pursue the same path to victory and glory! He pursued—he again addressed the Prelate, with their united thanks, and requested his Lordship, after taking them by the hand, would deign to assist them in finding out—whether he had *really* any title to the *mud* in question—or not! The following is a copy of the letter sent his Lordship on this interesting occasion:

(g) See page 25.

“MY

“ MY LORD,

“ I was honoured with your Lordship’s letter
 “ of the 16th of last month, which (as your Lordship
 “ desired) I communicated to the principal inhabi-
 “ tants of Fareham, and to the trustees of the Gosport
 “ turnpike road, who directed me to state the facts
 “ in a case for an opinion of council, and to send your
 “ Lordship a copy of such case and opinion, with
 “ their return of thanks for your Lordship’s kindness
 “ and attention *to their complaint* !

“ The trustees, at a public meeting, made an order
 “ pursuant to the opinion, and an indictment has been
 “ drawn and preferred at the late Hampshire assizes,
 “ against Mr. Barfoot, his servant, and labourers
 “ employed in destroying the quay and public high-
 “ way; and I am to inform your Lordship, same
 “ was found by the Grand Jury *a true bill*.

“ Mr. Barfoot appeared, and it remains a traverse,
 “ to be tried at the next March assizes. As there
 “ may be recorded *many useful matters* respecting
 “ sea mill and the sluice bank and abutment against
 “ the sea, I am requested to entreat your Lordship
 “ will direct your court-holder at Winton, to *make*
 “ *search* in the antient court books, and to favour me
 “ with extracts of such things as may be *material to*
 “ *produce*

" *produce in evidence*, in case the *title* should hereafter
" be brought in question.

" I am,

" MY LORD,

" With all respect,

" Your Lordship's faithful and

" Most obedient humble Servant,

" JAMES BEDFORD,

18th July, 1785.

" Portsmouth, Hants."

Whatever were the concerns which occupied his Lordship's attention, it is not with me to enquire. It seems, however, that no notice was taken of this address of thanks, until the month of December following, when his Lordship wrote as follows :

Farnham, December the 26th, 1785.

" SIR,

" I have written to Mr. Serle, who holds
" my courts, directing him *to make the search* you
" mention, and to throw *all the light* in his power on
" *my title* to the land now claimed by Mr. Barfoot. I
" have also directed Mr. Harrison, my Secretary, who
" goes to Winchester next week, to promote this
" search. I hope they will be able to send you some
" *satisfactory* intelligence.

" I am,

" SIR,

" Your faithful

" Humble Servant,

" B. WINCHESTER."

It

It must by this time be evident, to the understanding of every impartial reader, that the trustees had secured the opinion of a barrister at law, *to cover their proceedings*, and had drawn the Bishop of Winchester into the dispute, by means of an obvious and direct MISSTATEMENT OF FACTS! The first was obtained, by asserting that Mr. Barfoot had pulled down the encroachment where the land *was not his own*. The second, by stating that the land he claimed, *lay before the Bishop of Winchester's great Mills at Fareham*, over which the water necessarily *flowed to drive them*, and that therefore the *soil must be his Lordship's property*! A presumptive title, thus ingeniously set on foot, was now, by some *equally* ingenious mode, to be supported. They had, as appears by the substance of Mr. Bedford's last letter to the Bishop, no doubt but the Records of the Diocese would afford them some grounds to go upon; and where those were wanting, it were easy to supply the defect, by the testimony of the *very old and disinterested* inhabitants of Fareham!

Whilst the officers of the Bishop's Courts, and his Secretary Mr. Harrison, were busily employed in forwarding this meritorious discovery, Mr. Bargus, and his associates, were no less vigilant in whetting up the impaired memories of the aged and decrepid old men of Fareham. Mr. Bargus himself, as was most befitting, being resident on the spot, and deepest in ability, claimed the honor of collecting and arranging their evidence. The task was resigned to him.

And

And, as he fills the exalted character of Chairman to a Bench of Justices, in the largest and most respectable division in the county, is an acting trustee of the Gosport turnpike road, and chairman of the meetings; the patron of Fareham quay, and the oracle of the parish, it would be disingenuous not to state the important evidence he collected, and sent to Mr. Bedford in a letter, of which the following is a faithful copy:

“ DR. SIR

“ I have this day seen all the very old men
 “ in this place. all of them remembers the Bulding of
 “ Mr. Gringos Quey. all beleve thire was either ston
 “ or Plank and pile to keep up the Ground between
 “ Mr. G, gate post and the present B. Quay. they
 “ agree that thare was a foot path, be hind which
 “ was the Gunes plant'd. that before the foot way
 “ was a Road on the Beach betwen that and the end
 “ of the then B. Quay. Mr. Lavington remembers
 “ the Bulding a ship beyond Mr. G, House and
 “ almost parel With it. Mr. L. assisted at the
 “ Building the Q. remembers it was said at that
 “ time Mr. G. had Bought the Mud of Mr. Purkins.
 “ remembers Boats or Vessels Landing goad's on the
 “ Q. between the Present B. Q. and Mr. G. Gate.
 “ remembers Mr. Gringo brought an Action a gains
 “ Mr. Greens Father for Warfege for goades Landed
 “ on his Q. but never tri'd it. I send you Mr. Greens
 “ Lines, which I will in dever to explain. Mr. Green

E

“ and

"and Mr. Godwill are clear that with out Mr.
 "Gringos Gunes was a foot road which was Faced
 "with stone, then A Gate way which led a long the
 "Beach. then the Bis. Quay it came quite up (with
 "a Facing) to that road. Mr. Green is quite sure
 "that he has seen Vissels Un load between the end of
 "the present Bis. Quay and the said Road. Asking
 "Mr. Godwin why the Quay was not present'd, he
 "said becase every body was a fraid of Mr. G. Mess
 "G. remember the Building the Wall between the
 "Houses Mr. G. Quay. Lee also remembers the
 "Building Mr. G fathest store House next Mr.
 "Rickmans Land. Mr. Godwin remembers Riding
 "in a Waggon through the Gate way, and a long the
 "Beach. This is all I could get from them

"I am your very Humb Sert

"RD BARGUS

"P. S. Mr. Godwin and Mr. Green bothe re-
 "member the Face of old Quey goin on to the Gate
 "post. Mr. Godwin dos not remember the Vess.
 "un loding but Mr. Green dos very well"

How mournful and affecting does this elegant epistle
 conclude!—" *This is all I could get from them!*"—Un-
 grateful reflection!—After inviting to an entertain-
 ment "all the very old men in Fareham"—the rich
 and the poor, the blind and the lame, this was ALL
 that could be got by it! But let us see how well Mr.
 Bergus supplies this defect, by what he delivers in,

as a transcript of his *own* evidence! This also, for the sake of *correctness*, is literally copied from his Worship's own MS:

" There are People now a live that remembers before there was a Key. and when it was only a Beach or shore: The Key was Bult by order of the Late Bis. and paid for by Mr. Mant of Havant as his Woodman he agreed for the Price and paid the Workmen. Mr. Bargus only look'd at the Work for the Bis. The Turn Pike Trust gave 30l. to help fill up the Key

" There allwayes was as much Room as now and it is to be shone that the Key has been 20 if not 30 feet Longer then at Present. concequently there must have been more room on it then at present.

" The Bis and Mr. Gringo at all times repair the the Road over the Key that is to say Mr. Gringo repaired or mended the Rut and to the Wall. the Bis. the other part of the Key and at all times repair the Frunt. therefore the Key is the Bis. and Bult for the use of his Tennants. and is not in the left the Property of the Parish nor are they oblig'd to repair it. as has been proved at Winton by Inditcment with in thes Forty years.

" The Key has ever been us'd for Landing goades and that long before Mr. Gringos Key or Mr. Champnises was Built If Mr. Barfoot doubtet this

“let him ack Mr. John Green Mr. Godwin Mr.
 “Bebb. and Mr. Figete which has ship’d goades at
 “this Key for many years. and left the Goades for
 “dayes to Geather on it till the Vessels came to fetch
 “them

“Sr. Wm. Benett was at the turn Pike meeting
 “when the Thirty pounds was ordred to be paid Mr.
 “Mant for to asist in filling up the Key. the distance
 “taken in is only eight feet. and that Sr. Wm Benett
 “saw don and agreed to it. The Mud Lond with out
 “the shure I should beleve was the Bis. as a Mill of
 “his once stoad here. and it is Suposd that his Lord-
 “ship Built the Key to Ship off the Goades of his
 “Tenantes.

“Sr. Chasr. Ogle for bid the Workmen (from
 “going on for some time) as Bis. Wooder. and the
 “work was stopt till Mr. Mant as the lete Bis.
 “Wooder ordred them to go on and he would see
 “them paid.”

From hence it appears, that all Mr. Bargus, and the
very old men of Fareham could collect in support of
 their *own claim*, and that of the Bishop of Winchester,
 to the mudlands in question, is comprised in the fore-
 going detail. Now let us see what more abundant
 success crowned the researches of his Lordship’s
 officers and secretary. Mr. Bedford sends letter after
 letter to Mr. Serle, the Bishop’s Steward in Win-
 chester, to urge the necessity of obtaining immediate
 infor-

information from the ancient records, in order to throw some *light* upon this *dark* subject. Mr. Serle, in obedience to the commands of his Lord, and spurred on by these importunate entreaties, encountered volume after volume of dusty folios, and explored the remotest regions of episcopal privilege, until language became obsolete, and titles unintelligible ! Here he gave up the pursuit ; and all that resulted from his labour, may be collected from his answer to Mr. Bedford's letters, as follows :

“ DEAR SIR,

“ I have received *both* your letters respecting
 “ the suit carrying on between the Trustees of the
 “ Turnpike and Mr. Barfoot, and have seen the
 “ Bishop and Mr. Harrison on the subject, and have
 “ endeavoured to find out any thing material to the
 “ cause in question, but hitherto without success. I
 “ once having possession of the books of the Dean
 “ and Chapter of Winchester, who register all deeds
 “ confirmed by them, gave an extract, I think, to Mr.
 “ Bargus, of what may be very material. Those books
 “ are now out of my hands, and in possession of Mr.
 “ Ridding, who is newly appointed Chapter Clerk to
 “ the Dean and Chapter, to which I cannot now have
 “ access, without a request to him, which most pro-
 “ perly would come from you or the Bishop ; but Mr.
 “ Bargus can best tell what that information is, as 'tis
 “ now out of my recollection in part. You have re-
 “ ferred me to a particular data in your last ; but I

" find little or no variation in the entries of the mill
 " account for these two hundred years past. I will
 " still search; but wish you could send to me some
 " old intelligent person conversant with the particular
 " spot, who is clearly in your interest, and I think I
 " might yet find something material to assist your
 " cause. Such assistance I must have, as my searches
 " are very vague and uncertain without it. As to
 " quit-rents, Mr. Marrett, deputy to Mr. Barfoot,
 " by virtue of his office, collects them; and I know
 " not of any particular quit-rent paid to him; there-
 " fore you must apply for information on that head.

" I am,

" DEAR SIR,

" Your very obedient humble Servant,

" JAMES SERLE."

Winchester, 15th Feb. 1786.

The registers of the diocese affording no better
 authority for the Bishop's interference, put Mr. Bar-
 gus and his colleagues to a stand. The Lent assizes
 were hastily approaching, and the parties, unac-
 quainted with Mr. Barfoot's intention of traversing
 the indictment, were under great anxiety for its suc-
 cess. In these unpleasant circumstances, Mr. Bed-
 ford was once more ordered to write to Mr. Serle, to
 ask his *opinion* of the probable event and expence of
 the cause, as well as to request he would not be out of
 the way at the assizes, lest their success should hinge
 upon the evidence of the records. To this Mr. Serle
 wrote as follows:

" DEAR

"DEAR SIR,

"I have been put to some little difficulty how
 "to draw my conclusions on the subject of the suit
 "now in agitation between Mr. Barfoot and ———
 "respecting the expence thereof. I write blank be-
 "cause I am at a loss to know even at this time how
 "to name the opposing party; however, the suit is
 "commenced, and should be defended; I shall there-
 "fore do all I can to aid therein. You wrote to me
 "for a proof of the deed from which I took the ex-
 "tract as transmitted to Mr. Bargus: as I find you
 "have it through Mr. Harrison, I need not concern
 "myself in that; but I have other matter to offer, as
 "you will see by the inclosed paper. I do not find
 "any particular period when the mill was transposed;
 "but I think the defence stands well, and I probably
 "may add to it by to-morrow's search; however, I
 "must apprise you, that I am subpcœnaed to Abing-
 "don assizes: The commission day being Monday,
 "I must attend there on Tuesday; and I will endea-
 "vour to get the cause on there that night, so as to
 "return Wednesday evening: Sooner you cannot
 "expect me; and I must therefore beg you to repre-
 "sent this positive interruption, and to postpone the
 "cause (by representation through Council to the
 "Judge) to the latest time. I have accepted the for-
 "mer subpcœna, and have none from you; therefore
 "I cannot do otherwise, and I conceive you will think
 "me material in the cause. I wish you to give me a
 "line, that I may receive it some time on Sunday

E 4

"before

"before I leave Winchester: Any part of that day
"will do, as I shall not set out till Monday. If you
"or Mr. Hancock could come up Sunday, I think
"you might get information.

"I am,

"DEAR SIR,

"Your very obedient Servant,

JAMES SERLE.

"You cannot appoint a consultation of counsel for
"Wednesday evening, as my return cannot be posi-
"tive; but I think it should be had before the trial,
"when I can be present, as I know its circum-
"stances.

"If there should be occasion, I have to beg you to
"let me have a copy of this letter another time, if I
"should ask it, not having time now to make one."

Winchester, 2d March, 7 in the evening.

The endeavours of Mr. Harrison, the Bishop of
Winchester's Secretary, seem to have been as fruitless
as those of Mr. Serle. He was applied to on all
hands, to make every enquiry within his department.
The result of them may be collected from the follow-
ing letter to Mr. Bedford:

"S I R,

"I went to Chelsea this morning to search for
"the leaves I mentioned to you in my last, and I am
"sorry to inform you, that after looking minutely
"into

"into every parcel, and spending much time, I was so
 "unfortunate as *not* to meet with them. I will call
 "on your agent in Clement's Inn, on Monday morn-
 "ing, and we will together examine *them* again, as I
 "shall be concerned if not (*b*) found.

"I am, Sir,

"Your most obedient Servant,

"H. HARRISON,

"No. 43, Broad-street, Carnaby Market,

"London, *July 5, 1786.*"

Here then rests the title of the Bishop of Winchester, and the Town of Fareham, both as to the quay, and to the mudlands adjoining to it. That a presumptive title, no better established, and opposed by legal deeds, strengthened with long possession, could afford but slender ground for success, must be abundantly

(*b*) This lease was afterwards found, and proves to be a grant from Bryan, Lord Bishop of Winchester, in the year 1661, to Henry Boyes, Jane Boyes, and John Horner, for their three lives, of the *same* marsh and dwelling-house, as is particularly described in the note, page 4, to be part of the demesne lands belonging to the Bishopric. Here then, by the evidence of this lease, we are furnished with an additional proof, that the present Bishop of Winchester can exercise *no right* at the spot in question, where this marsh and tenement are situate; for being disposed of on a lease for *three lives absolute*, they constitute a freehold in the grantee, over whom the Lord can exercise *no authority*. See the Statute. Beside, had these premises claimed any right of quayage or wharfage, there is no doubt but the same would have been mentioned in this lease, which is totally silent about it.

obvious.

obvious. The trustees, therefore, and their advisers, were at a loss how to draw their plea, or on what foundation to build their hopes. They were determined to catch at every twig; but lest all should give way, they were at last hardy enough to avow, *That they had Mr. Barfoot's CONSENT for taking the land!* The reader, after what has been premised, may well be astonished, and even doubt the assertion. But the following letter, which accompanied their plea, will place it beyond a doubt:

“DEAR SIR,

“As I only wished to know whether it was
 “in his own or his wife's right, that Sir William
 “Benett was tenant in common with plaintiff, the
 “extract from Gringo's will which you have sent me
 “is satisfactory on that head.

“The facts stated in the brief, and other additional
 “instructions, laid before me since I drew the first
 “plea, have convinced me of the propriety of plead-
 “ing a license from Sir William Benett, as tenant in
 “common; and as that is not a matter pleaded under
 “the turnpike act, it will not preclude us from
 “giving any justification we may have under that act,
 “in evidence under the general issue, which I shall
 “plead along with the license. I communicated in
 “consultation to Serjeant Grose my idea of a plea of
 “license. He at first doubted whether one tenant in
 “common could grant such a license; but I soon re-
 “moved

“ moved his doubts on that point, and he carried the
 “ idea farther, and desired I would add also a PLEA
 “ OF LICENSE from Mr. BARFOOT HIMSELF. Such
 “ a plea *can do no harm*; but I think the *evidence to*
 “ *support it amounts but to slight presumption*, and there-
 “ fore I expect *no great benefit from it*.

“ There is no doubt but Sir William Benett may
 “ be an evidence, (and the best sort, because against
 “ his own interest) to prove his own license.

“ With best respects to Mrs. Bedford,

“ I remain,

“ DEAR SIR,

“ Very sincerely your's,

“ SAMUEL MARSHALL.”

Serjeant's Inn, Fleet-street,

Feb. 11th, 1786.

Mr. Barfoot, having thus discovered the strength of his adversaries, and obtained the grand secrets of the plan on which they meant to act, remained in a state of perfect tranquillity as to the consequences. He could not, however, persuade himself, that the Lord Bishop of Winchester, after the personal interview and conversation he had been honored with at Dr. Chelfum's, would really stoop to foul his hands in *this muddy (i) property*. But he was determined,

(i) So expressed by Mr. Bedford, in the case sent for his Lordship's approbation, *after* it had been before counsel for an opinion. See page 35.

if

if possible, to have the fact authenticated by his Lordship's own signature. With this view, Mr. Barfoot addressed the following letter to his Lordship, at Farnham Castle:

" MY LORD,

" I have taken this opportunity of applying
 " to your Lordship to remind you, that upwards of
 " three years ago I waited upon your Lordship at Dr.
 " Chelfum's, at Droxford, and complained how very
 " ill used I had been by some of the Fareham trustees
 " of the Gosport turnpike road, by their having
 " taken from me, at my quay, at Fareham, one
 " hundred and ninety-six feet in length, and in
 " breadth twelve feet and upwards, of my land, in
 " order and for the purpose of making a free quay for
 " themselves there, to the prejudice of mine, against and
 " upon that part of said road as leads by it from Fare-
 " ham to Gosport, and that under the sanction of
 " your Lordship, as well as of the Gosport act, as they
 " were then pleased to declare. At the same time
 " telling me you had allowed 179l. towards the ex-
 " pence of enlarging and building the same; and that
 " they, the trustees, had paid the residue. Your
 " Lordship was then pleased to declare, That the
 " transaction was before your time, you knew no-
 " thing of it, and you would not therefore interfere
 " about it, or words to that effect. Since which I
 " have made many applications to them for satis-
 " faction; and offers on their part have been made in
 " return,

" return, hitherto without effect. So that the law
 " which began on their part has taken place, and will
 " in all probability settle the difference between us.
 " But to avail themselves of that, they have lately,
 " by way of defence, (amongst other pleas) to my great
 " astonishment, set up your Lordship's title, and a
 " justification under it, alledging what they have done
 " was by your Lordship's direction, and as your ser-
 " vants. How your Lordship will account for such
 " conduct, I am at a loss to guess. That though
 " your Lordship is lord of the greater part of the
 " lands in Fareham, yet no part of the land in ques-
 " tion is held under that manor; and your Lordship
 " had certainly no right to lengthen or widen the stone
 " facing of the quay or road, beyond the *old boundary*,
 " which has lately been extended ten, twelve, and
 " fourteen feet beyond what it formerly was. Nor were
 " your Lordship or predecessor obliged to repair the
 " facing or road, farther than to allow timber suffi-
 " cient to repair a sluice or bridge that leads across
 " the road near and adjoining to my quay, calculated
 " for the purpose of conveying the water occasioned
 " by heavy rains that fall above, through your Lord-
 " ship's marsh into the sea.

" If your Lordship had at any time ever intimated
 " to me you had been informed the lands in question
 " were a part of your manor, I should have been, (as
 " I was when I waited on you at Droxford) not only
 " ready, but willing to have settled the matter with
 you,

“ you, without trouble or litigation, and to have
 “ shewn my title deeds to your steward, secretary, or
 “ who so else you might have thought proper to have
 “ appointed, which would have prevented your
 “ name being now improperly used, and added
 “ to the number of my adversaries, who were be-
 “ fore innumerable; and it would have been saving
 “ much trouble to your Lordship, as well as to

“ MY LORD,

“ Your Lordship's much injured,

“ But faithful humble Servant,

“ PETER BARFOOT.

Midlington, 28th June, 1786.

“ P. S. I should not have troubled your Lordship,
 “ could I otherwise have believed, (after what had
 “ passed between us) that you would have suffered
 “ your name to have been used against me.”

To which letter his Lordship condescended to
 return the following most gracious answer:

“ S I R,

“ When you talked to me of *supposed* (k) in-
 “ jury done to you by my predecessor and the trustees

(k) Mr. Barfoot positively declares, he never talked of a *sup-
 posed* injury; what he pointed out to his Lordship, was a real
 and an insufferable injury.

of

“ of the turnpike road, *I could only say* (l), That the
 “ matter took place in my predecessor’s time, and I
 “ was not answerable for or concerned in it. Had the
 “ matter *rested there* (m), I should never have thought
 “ any more of it; but I find that since that time, you
 “ have taken violent steps, and destroyed some works
 “ done, upon what is *stated to be* in my manor; and
 “ that not only the trustees and I, but the *public*, are
 “ much incommoded as well as injured. Under these
 “ circumstances, I do not think you can have any
 “ reason to complain, if my name is employed in the
 “ investigation of a matter so changed by your con-
 “ duct, from what it was before. I understand that
 “ the trustees are desirous to bring on the question,
 “ *for the sake of the public*; they are the proper judges
 “ of the necessity of doing so, being acquainted with
 “ the spot, and with all the circumstances relative

(l) This is a palpable evasion. His Lordship *does not deny* that
 he *made a promise*; but as the memory of the *best of men* is some-
 times *treacherous*, it was in no shape incumbent on him to recollect
 more, than that he *could only say*, &c.

(m) It was likely that Mr. Barfoot would suffer the matter to
rest there, when he waited on his Lordship to complain of the
 trespass made on his property, and to express a wish, since his
 Lordship’s name was used, of leaving it to his decision, rather
 than proceed to extremities. His Lordship’s declining every
 kind of interference in the matter, because the dispute commenced
 before his time, was surely no way binding on Mr. Barfoot to
 sit down with the loss of his property, or not to pursue other means
 of redress; whilst the promise his Lordship made, undoubtedly
 required that he should adhere implicitly to it!

“ to the transaction from the beginning of it, to
“ this time.

“ I am,

“ S I R,

“ Your's, &c.

“ B. WINCHESTER.”

Farnham, 2d July, 1786.

In reply to this letter, Mr. Barfoot wrote to the following effect :

“ MY LORD,

“ I had neither given your Lordship nor my-
“ self any trouble, had the injury I have sustained
“ been *supposed*, and not *real*; nor should I have
“ taken any violent steps, had not the trustees laid
“ *violent hands* upon my property, and persevered in
“ the most unjust and ungentlemanlike manner; not
“ only in retaining what they had so taken, without
“ making me even the compensation they themselves
“ proposed, but in their endeavours also to render
“ what they left behind, of little or no value.

“ These being the facts I *originally* stated, and in
“ which your Lordship *positively* and *unequivocally* pro-
“ mised *not to interfere*, great, indeed, must be my
“ astonishment, that any circumstance, much less a
“ pretence that the *quality* of the dispute has been
“ changed by my conduct, should operate with your
“ Lord-

“ Lordship to countenance a measure *now*, which is
 “ precisely *the same* as when you so *positively determined*
 “ not to take any part in it.

“ I need only observe further on the subject, that
 “ your Lordship’s title is not the only one the trustees
 “ have threatened to set up against me. I have been
 “ menaced with those of the Mayor and Corporation
 “ of Portsmouth, and of the manor of Cams; and ’tis
 “ impossible to say how many more pretended claims
 “ may hereafter be brought forward.

“ As your Lordship’s letter seems to lay much
 “ stress upon the word *violent*, I do most earnestly re-
 “ commend to you, if my *ipse dixit* is not sufficient, to
 “ advert to the proceedings of the trustees, as entered
 “ in the turnpike books, which will clearly convince
 “ your Lordship, that the tyranny complained of is
 “ solely and only on their part, and not on mine.

“ Should it, after this, be your Lordship’s deter-
 “ mination still to lend your name by way of sanction
 “ to the proceedings of the trustees, it will be found,
 “ that neither their indemnification, nor the pretence
 “ of acting for the public good, will do away the cen-
 “ sure those proceedings deserve. A proper regard to
 “ my own character, to Justice, and to Truth, will
 “ compel me, however unpleasant the task, to unde-
 “ ceive the world, and to hold up to public view, the true
 “ motives

" motives by which your Lordship and the trustees
 " have on this occasion been stimulated.

" I have the honour to be,

" My LORD,

" Your Lordship's faithful,

" And obedient Servant,

" PETER BARFOOT."

Midlington, 6th July, 1786.

It was not to be supposed his Lordship would reply to this letter. Contemptuous silence gave it a rebuke, whilst new resentment acted as a stimulus to fresh exertions. It served however to convince Mr. Barfoot, that he had nothing to hope from the *promises* of his Lordship. The episcopal title was at all events to be set up; and, when the assizes approached, Winchester Hall was made the repository of his Lordship's voluminous records! Every other preparation was made, to defend the action of trespass, which Mr. Barfoot had brought against Bargus; but which, for the present, he did not chuse to try.

Mr. Bedford, notwithstanding his uncommon sagacity, mistook the motives which induced Mr. Barfoot to keep this action back. He asserted, it was occasioned by insuperable obstacles in the way of his making out a title. But Mr. Barfoot, conscious of the strength of his claim, and reflecting that Mr. Bargus had obtained a bill against him upon the indictment

dictment for pulling down the road, was determined to see how far he could support so unjustifiable a measure in a court of law. Mr. Barfoot's guilt was of course to be established, before a jury could convict; and as no evidence, less than a *positive proof* that the land *was not his property*, or that he had *previously consented* to their taking it, would amount to a conviction, it became obvious, if they failed here, they were gone *in toto*. Foreseeing this, Mr. Barfoot was determined to put them to the *ne plus*, whilst he kept his own action in reserve for their future amusement. He therefore sent them the following notice of trial upon the indictment, in which he included the names of as many of his opponents as he could at that time ascertain :

PETER BARFOOT and others against the KING.

On the prosecution of Messrs. Bargus, Parsons, Maidman, Atkins, Leeke, Fall, J. Lifs, Henville Clerk, James, Bedford, Barney, Callaway, Green, Nicholls, Webb, Albeck, and others.

" GENTLEMEN,

" I do hereby give you notice, That the Defen-
 " dants intend, at the next assizes to be holden at
 " the Castle of Winchester in the County of South-
 " ampton, to try the Indictment you, or some of you,
 " have at a former assizes held at the same place, pre-

“ferred against them in the said cause. Dated this
“fourteenth day of July, 1786, from,

“GENTLEMEN,

“Your most obedient Servant,

“PETER BARFOOT,

“One of the Defendants.”

To RICHARD BARGUS, Esq. and others.

This indictment came on to be tried at the summer assizes, held at Winchester, on Thursday the 27th of July, 1786, before Mr. Baron Hotham. Counsel in support of the indictment were, Mr. Serjeant Grose, Mr. Miffing, and Mr. Marshall; in behalf of Mr. Barfoot, Mr. Serjeant Lawrence, Mr. Burrow, Mr. Dalas, and Mr. Portal. The business was opened by Mr. Serjeant Grose, who very ably stated the great conveniencies that had arisen to the public, by widening the turnpike road over what is called Fareham Quay. He then proceeded to shew, That this place was formerly so narrow, though at the sea side, and particularly in one part, that the lives of persons passing over it, were absolutely (n) endangered. That this indictment was preferred against Mr. Barfoot, for destroying the stone facing which supported the new-made road, and was carried out and erected against the sea,

(n) How then could it be a public quay, encumbered with goods and merchandize, loading and unloading from vessels, at the same time that it was a public road, of such circumscribed dimensions, as to endanger the lives of persons passing over it?

upon

upon some mudlands claimed to be his property: That this stone facing having been broken down by his orders, the road lately widened and made safe and convenient for the public, was hourly washed away by the sea, and would, if not speedily prevented, soon be reduced to as narrow and dangerous a state as ever. That Mr. Barfoot, instead of prostrating and destroying this stone facing, in that part which was supposed to have been erected upon his land, had absolutely pulled it down where it was presumed he could have no kind of right. And as incontestible evidence would be brought to prove this, he doubted not but the jury would find a verdict against him.

The two first witnesses were John Littlefield, and John Hunt, who were called to prove, that Mr. Barfoot, by himself and servants, had broken down the side and stone facing of the turnpike road. They seemed to know very little of the matter. All they could affirm, was, that they saw one of Mr. Barfoot's servants kick a stone from the top of the facing into the sea.

Richard Bargus, Esq. was then SWORN, and examined by Mr. Serjeant Lawrence (o).

(o) The evidence of Mr. Bargus was taken down. It may not be unentertaining, were the reader to compare it with the different assertions set up in the other stages of the business.

Q. You are one of the trustees of the Gosport turnpike road?

A. Yes.

Q. You, I think, superintended the altering and widening the road or quay at Fareham?

A. I attended as a trustee to see it done.

Q. I understand, Sir, you are one of his Majesty's Justices of the Peace for this county?

A. Yes, Sir,—*with a low bow.*

Q. And a very worthy, upright, conscientious magistrate I am persuaded you are?

A. Yes, Sir,—*with a lower bow.*

Q. Yes, Sir! Then how comes it, Sir, that you have taken away the private property of an individual, in the manner you have done?

Here Mr. Serjeant Grose interfered, and a warm conversation ensued, which was put an end to by the Judge, who told Mr. Serjeant Lawrence he was warm. Mr. Lawrence begged his Lordship's pardon—he was warm—but there was cause. He then resumed the examination.

Q. Did not you give directions for widening Fareham quay, and for extending the road several feet upon the mudland?

A. I gave no directions. I had nothing to do with that. The orders for the work *was* given by Mr. Mant of Havant, the Bishop's woodman. He directed the bridge, and the stone facing of the road, to be

be carried out farther upon the waste, which we supposed belonged to the Bishop of Winchester; and we agreed to pay 30l. for filling in the top of the road.

Q. How could you suppose the land to be the Bishop's waste, when you had applied to Sir William Benett, joint owner with Mr. Barfoot in the land, for his consent to set the facing out upon it?

A. We never did ask Sir William's *consent* at all, for we did not *believe* the land was (*p*) his. I only called upon him to go down with me to the quay, as a trustee of the road, to see the work was well done; and when we came down, we asked if he approved of it; and that if he did not, it should be altered. Then Sir William pointed with his cane, and said, he thought they had gone too far upon their quay. I replied, "For God's sake, Sir William, don't let us do you any injury," and we had the stakes removed, and set in about two feet. Sir William then approved of it, and the workmen told him it would strengthen that end of his quay, as the wall of it was out of repair.

(*p*) And yet Mr. Bedford has all along *built* upon Sir William Benett's consent, both in the instructions to his counsel, and in his letter to the Bishop of Winchester. And notwithstanding Mr. Bergus's present affirmative *upon oath* to the contrary, yet, at several of the turnpike meetings, he pleaded the consent of Sir William, as an excuse for having taken the land without calling in a jury. The same plea is made in Mr. Bedford's official letter, page 18; and was set up as a justification of Mr. Bergus himself, in his plea to Mr. Barfoot's action of trespass! See Mr. Marshall's letter, page 58.

Q. Then you never understood Sir William Benett was applied to for leave to lay any part of these mud-lands to the road?

A. No, I never understood that he was applied to at all, not for that purpose.

Q. Did you, Sir, upon your oath, never hear that this land, or some part of it belonged to Mr. Barfoot?

A. No, I never heard of any title to the land there, but the Bishop's.

Q. How then came the trustees, at several of their meetings, to propose making Mr. Barfoot a satisfaction for the land you had taken?

A. I never heard of any satisfaction that was to be made him.

Q. Did you never propose to post and rail off part of the road upon the quay, to prevent its being used as a wharf?

A. I never was at any meeting where such a proposal was (q) made.

Q. Nor that hand bills were ordered by the trustees, to be distributed about Fareham, forbidding all persons from landing or shipping their goods there?

A. I never heard of any.

Q. Pray, Sir, were not you present at a turnpike meeting, when Mr. Barfoot produced his title deeds;

(q) Mr. Bargus contradicts this evidence, by his own hand writing. He not only attended the meeting, but was *Chairman* on the occasion, and has signed the order, either to put up posts and rails; or else to have the land valued by a jury! See page 18, and Mr. Bedford's official letter.

and.

and when a motion was made and agreed to, for having his title enquired into by a reference?

A. I heard something talked of about it, but I don't know any thing of it myself.

Q. But, Sir, I ask you, upon your oath, Whether you were not present *yourself*, when the motion was made?

A. I cannot recollect that I was.

Q. No! Nor did you never hear from the other trustees that such an arbitration was proposed? Or that a jury was to be called in to value the land between the trustees and Mr. Barfoot?

A. There was some talk about a jury at one time; but I was not at the meeting.

Q. Pray, Sir, how far do you suppose you carried the road out upon this mudland?

A. There was not much land taken, for the new quay was not carried out so far as the old one, by two feet and a half.

Q. No! Why I understood the road had been made considerably wider than it was before?

A. So it is. But where the quay is, for about sixteen feet long, there is an old foundation where Fareham quay was built formerly, where it went a great way out into the sea, two feet and a half beyond where the new quay is built. This old quay was a great deal bigger than the new one, as an old man told me some time ago, one Henry Moulding, who was above a hundred years old when I enquired of him

him about it. He is since dead ; but he remembered the quay, and there *is* the stones of the foundation now to be seen. And here Mr. Barfoot began to pull it down ; not at his own end, but here, where the old quay was, and for several feet where he could have no right at (r) all.

Here the Judge interposed. He said, If Mr. Barfoot, in taking possession of his property, had gone a foot or two farther upon the facing, he should lay no stress upon that, because it was likely to have been done by accident, and could be no bar to his taking that part which was his own. He thought it a pity such a dispute should go on. It appeared to him, from what had been stated, that the road was formerly dangerous and inconvenient. It was now altered, and made safe and commodious. He would

(r) The reader is requested to take up these facts, and to compare them with the depositions of the Rev. Dr. Griffin, one of the trustees, before the arbitrator ; whose evidence, with that of Mr. Goyer, flatly contradicts that of Mr. Bergus. This Gentleman has himself stated, in his own hand, in a letter to Mr. Bedford, that “ There are People now a live that remembers before there “ was a Key. and when it was only a Beach or shore.” Which of these assertions would Mr. Bergus have us believe ?---that there are people now living, who knew the spot *before* there was a quay ; or, that there was an ancient quay, *long before the memory of man* ? He has positively asserted both. See his own words in page 50.

there-

therefore recommend to both parties, not to proceed with the cause, but refer it to be settled by arbitration. For he foresaw very clearly, that under the present circumstances, if a verdict went for Mr. Barfoot, the present improvement would be most probably destroyed, the road, perhaps, be torn to pieces, and the public deprived of the advantages it afforded them.

An altercation now took place between the Counsel. Mr. Serjeant Grose urged to give up the indictment, and pressed to go immediately into the title, by bringing forward the action instituted against Mr. Bargus, for a trespass on the estate; whilst Mr. Barfoot, declaring himself to have been shamefully treated, would neither wave the indictment, nor hearken to any mode of accommodation, but pressed his Counsel to go on. The Judge interposed again, still recommending a reference. He said, That as the trustees disputed Mr. Barfoot's title, it should be incumbent on him to produce his deeds before the arbitrator; and if he established a title, that then it was but right he should have a full and ample compensation for the injury done him. But if he failed in such proof, that he should, at his own expence, replace what he had caused to be taken down. His Lordship then addressed himself to Mr. Barfoot, and strongly recommended this mode of terminating the dispute; being persuaded that he desired nothing more than a fair and proper compensation for the injuries sustained, which he was sure would come much better in this way,

way, than in any other; at the same time that it would secure to the public the benefit of the alteration. Mr. Barfoot replied, That, at his Lordship's request, he would consent to it; but by no means at the desire of the trustees.

The next difficulty was to agree upon a fit arbitrator. R. P. Blachford, Esq. of the Isle of Wight, was named both by the Judge and Counsel, as a gentleman highly competent to the business, provided he would undertake it. He was an utter stranger to Mr. Barfoot; but, as he heard him recommended from the bench, it was a sufficient reason for him to acquiesce in the nomination. Mr. Blachford was then sent for into Court, and after a little explanation, he accepted the office.

Much contention having arisen about the mode in which the arbitration should come forward, it was at length agreed, that it should be governed and directed by a rule of that Court. This was immediately prepared by the Council on both sides, under the direction and approbation of the Judge. The following is a copy of it:

R U L E of R E F E R E N C E.

SOUTHAMPTON. At the Sessions of Oyer and Terminer, and general gaol delivery of our Lord the King, of the County of Southampton, of the prisoners therein
being,

being, held at the Castle of Winchester, in and for the said County, on Tuesday the 25th day of July, in the twenty-sixth year of the reign of our Sovereign Lord George the Third, now King of Great Britain, &c. and before Sir Beaumont Hotham, Knight, one of the Barons of his Majesty's Court of Exchequer; and Sir Richard Perryn, Knight, one of the Barons of his Majesty's said Court of Exchequer, and others, their fellow Justices, &c.

The KING against PETER BARFOOT, Esq:
and others.

IT IS ORDERED BY THE COURT, by and with the consent of the prosecutors, as of the defendants, that the last of the jurors, impanelled, entered, and sworn to determine this indictment, be withdrawn; and that all matters in difference between the said parties, be referred to the award, order, final end, and determination of R. P. Blachford, Esq. who is to enquire whether the defendant Peter Barfoot, has any title to the spot on which the quay in the indictment mentioned, or any part thereof, has been erected. And it being admitted by the counsel for the prosecution, that the same is carried on at the instance of the Trustees of the turnpike road from Gosport to Chawton-Pond;

Pond; if it shall appear that the said Peter Barfoot has any title thereto, the said R. P. Blachford shall determine what compensation shall be made to him for the erection of the said quay; and that the same be paid by the trustees of the road, out of the trust money thereof. And if the said R. P. Blachford shall be of opinion that the said Peter Barfoot has no title to the said spot, or any part thereof, that the said Peter Barfoot do repair such damage as the defendants have done to the quay, at his expence. And it is further ordered, by the consent of the said Peter Barfoot and Richard Bargus, Esqrs. (present in Court, and consenting to become a party to this rule) that the action, brought by the said Peter Barfoot against the said Richard Bargus and others, for erecting the said quay, be no further proceeded in; and that the costs thereof be in the discretion of the said R. Pope Blachford, who is to make and publish his award in writing, of and concerning the premises, on or before the second day of next Michaelmas Term. The parties shall not bring or prosecute any action or suit, in any court of law or equity, against the said arbitrator, or against each other respectively, concerning the premises, so as aforesaid referred; and such of the parties as shall by affected delay or otherwise wilfully prevent the said arbitrator from making his award, shall pay such costs to the other or others, as the Court of King's Bench shall think reasonable
and

and just. And that this order be made a rule of that Court, if the justices thereof shall please.

By the Court.

FOLLETT.

Under this order, the business goes into the hands of Mr. Blachford. He is directed to enquire, Whether Mr. Barfoot has *any title* to the spot, upon which this encroachment, *or any part of it*, is erected. If he has,—that is to say—if he produces a title against the Trustees, that then he shall receive an adequate compensation for the injury THEY have done him. He has *then* fulfilled the requisition of the Court, and the compensation becomes *his right*. The arbitrator is not *at liberty* to set up the claim or title of a third person, or *to prove a negative*. It is a proceeding contrary to the practice, as well as to the constitution of this country. To place this in a clearer point of view, the Court specifically declares, “That it is “admitted by the counsel for the prosecution, that “the suit is carried on at the instance of the Trustees “of the Gosport turnpike road;” inferring from thence, that the Trustees, in their *corporate capacity*, were the only opponents Mr. Barfoot had to contend with. The cause was stript of every collateral matter; no third person, no third claim, either real or pretended, could now be heard; nothing could legally come before the arbitrator, but what was cognizable in the Court of King’s Bench, and within the terms of the submission.

It

It is equally demonstrable, that the *power* and *conduct* of the arbitrator *himself*, were, in this particular case, as much under the direction and controul of the rule of reference, as the *dispute* which he was empowered to determine. The Court had only delegated to him, as its substitute, that authority with which it was itself invested by the legislature. A greater power than the Court had, it could not possibly grant; and without this power, he could not act at all. The arbitrator, therefore, by law, by honor, and by conscience, was bound implicitly to follow the directions of this rule, however his own wishes, and his own views, might have impelled him to the contrary.—But more of this hereafter.

In conformity with the order of reference, Mr. Blachford fixed upon Tuesday the twenty-second day of August then next ensuing, to meet at the Red Lion Inn at Fareham, about twelve o'clock at noon, to hold the arbitration; of which he gave previous notice to the contending parties. He likewise declared his intention of sitting upon the business as late as possible that night, and of going a few miles out of Fareham to a friend's house to sleep, from whence he should return the next morning, to finish the enquiry.

On the day appointed, Mr. Bargus, with his attorney and partizans, composed of the Bishop's officers, tenants, and interested trustees, were foremost to surround the person of the arbitrator, and to pour upon him

him the courtly greetings of episcopal embassy. Mr. Barfoot, ever backward in courting favour, owns himself remiss in not coming forward with similar grimace. But he had no idea that the cause rested upon such formalities, and it was his misfortune to leave them entirely out of the question.

Prior to the examination of witnesses, the arbitrator chose to take a survey of the premises in dispute. He was attended by Mr. Bedford, with plans, in behalf of the trustees; and by Mr. Wilkes, of the City of Winchester, with plans, on behalf of Mr. Barfoot.

In this survey, Mr. Bedford pointed out the Bishop's marsh and cottage; and contended that the cottage was formerly a mill, belonging to the bishopric, called *Sea Mill*, and that the marsh was called *Sea Mill Pool*. That this mill was drove by the reflux of the (s) sea; and that the quay or causeway before the cottage, called *Fareham Quay*, was an appendage to the said mill, from whence the Bishop's tenants had always

(s) Common sense, upon the slightest view of the spot, refutes this assertion. In the first place, the sea never could have flowed high enough up to drive a mill; and in the second, there never was but ONE THOROUGH, which is the Bishop's sluice before-mentioned. How a mill of this description can be drove by one thorough, is a problem that yet remains for the ingenious to solve. Until that is done, let it suffice to say, that several of the most eminent millers and mill-wrights in the county have inspected the premises, and declare it impossible for any mill ever to have stood there.

G

been

been accustomed to ship off their flour, and other goods and merchandize, *free of expence*. That this spot, and the lands about it, were a part of the Bishop of Winchester's manor, and that the mudland, where they had widened the road, was *part of the Bishop's waste*. That Mr. Gringo, when his wharf was built, had encroached upon the Bishop's quay, and upon the public road, and had carried out his wall and gateway beyond his own land; of which he affected to convince the arbitrator, by directing his eye in a straight line from a point about three feet within the wall, to the north west corner of Mr. Gringo's late dwelling-house. Mr. Wilkes presumed to contradict this assertion, and to request the arbitrator would cast his eye upon the plan of Quay-Close estate, and note the *boundaries* thereof, as laid down by the surveyor, and compare the same with the premises themselves. He then carried him to the outside of the wall and gateway, *said to be an encroachment*, and requested him to examine a range of posts and stones, which are fixed in the ground a yard and more from the outside of the wall, and wear the face of great antiquity. These were evidently placed in this direction, to ascertain the extent of Mr. Gringo's land to the west, which it was presumed the present owner could take in and inclose whenever he pleased; if not, the commissioners of the turnpike would hardly suffer such large stones and posts to be set up on the side of the road, in a situation that proved a constant annoyance to horsemen and carriages. This appeared decisive, and the point was given up.

The

The arbitrator was then taken to the *eastern* side of the estate, where his attention was directed to another range of very ancient posts and piles, fixed in the earth, for the purpose of describing the *eastern* boundary. Mr. Wilkes took care to shew, that these piles were continued a considerable distance into the sea, *at high water mark*, and terminated close to the side of the channel, or water's edge, *at low water mark*, in a point exactly parallel with the extreme post of the range on the *western* side, including all the mudland up to the Bishop's sluice, in front of the quay; and that the land thus far, that is to say, from the side of the channel, *at low water mark*, in a straight line across the mud to the turnpike road, was the extent *northward*, of Quay-Close estate (t). That directly *in front*

(t) For reasons that will occur, with respect to Mr. Barfoot's "right to the spot, or any part of it," whereon the encroachment stands, it is absolutely necessary to satisfy the reader's mind, as to the extent *seaward*, i. e. *northward*, of Quay-close estate, in order to shew, that the *south end of the encroachment*, which abuts against Mr. Barfoot's quay, is indisputably built upon *part* of that estate. For this purpose, should the land marks, which run in straight lines, as above described, from the full sea-mark to *low-water mark*, on each side the estate, covering or inclosing between thirty and forty feet of mud or shore in the front of Mr. Barfoot's wharf and storehouses, not be deemed *a sufficient proof of the claim*, which in all other cases would have been decisive, we subjoin the testimony of William Spershott, formerly a lawyer at Fareham, who, before his death, which was many years ago, signed a paper writing, of which the following is a copy :

" William Spershott hereby declares, that for upwards of forty-five years, he knew the close called the Dock and Dock-yard

front of this estate, and *adjoining to it*, Mr. Barfoot claimed *two acres more* of the mudlands, which his predecessor Mr. Gringo had purchased under a grant of Charles I. from Mr. Franklin of Fareham, in the year 1737, and which also extended from the side of the

“ Close, to be all one entire estate, from low-water mark; and
 “ that *old Mr. Gringo* fenced it all along the road down to the key,
 “ and that there was only a stile and footway through it; and that
 “ it was railed and fenced in of the other side, next to old Wood-
 “ man’s land, now Franklin’s, and was always enjoyed by Mr.
 “ Gringo as his own entire estate *down to low-water mark*, and
 “ that it laid all open as a meadow, without any separation, until
 “ the buildings were began by *old Mr. Gringo*. And remembers that
 “ the gate was always kept locked by Mr. Gringo, for his use;
 “ and likewise remembers of several payments to old Mr. Gringo
 “ for laying timber all along the beach or Dock-yard Close next
 “ the sea, being a sawyer in the said Dock-yard Close next the
 “ sea, for nine years; and remembers when one Smith rented
 “ the Dock for building of vessels there, and paid Mr. Gringo
 “ for the same. And a vessel was built exactly on the ground
 “ where the long storehouse now stands, of two hundred tons bur-
 “ then, and he sawed the timber and plank for the same, and Mr.
 “ Samuel Martin rented the brick-kiln at that time. And the
 “ fence wall next the highway called the key, always belonged
 “ to Dock-yard Close to low-water mark; and a pile that stood
 “ to mark the ground has been washed away since his memory,
 “ between thirty and forty feet out to the seaward, almost all
 “ along shore.

“ Witness the mark X of

“ WILLIAM SPERSHOTT.”

The above testimony was given in evidence in 1722, in consequence of some claim to a public road for carriages through Quay-Close estate; and refers back to the life-time and transactions of the late Mr. Gringo’s *grandfather*, when the estate had neither
 house

the river or channel eastward, to the turnpike road westward, and that upon the western side of these mudlands, part of which belong to *both* estates, the encroachment, which was the subject of the present enquiry, had been made. That the injury to Mr. Barfoot, did not so much result from the quantity of land taken away, as from their having made a free quay on the side of the road, which deprived him of the customary tolls that must otherwise continue to be paid at his wharf, and of which, for upwards of four years past, he had been deprived, to the amount of twenty pounds a year and upwards.

house nor quay upon it, but was a meadow to depasture cattle, bounded on the north east by the sea, or channel, and extended to *low-water mark*. Now it must be evident to every man, conversant with landed property, that it is the common usage of all estates bounded by the sea, that its boundary shall be *the low-water mark*, and not the *full sea-mark*. And the reason is obvious. If the King, who is Lord Paramount of the Seas, had the power of claiming wherever the sea at high-water might flow, neither his own dominion, nor the tenure of his subjects, could ever be ascertained; because the extent of high-water varies according to the state of the moon, and to the turbulence or serenity of the weather; whereas the low-water mark knows little or no real variation. Hence the legislature, as well as the immemorial custom of mankind, have determined the low-water mark to be the boundary of all lands *subject to be overflowed by the sea*. And why *this particular estate* should be an exception to that universal rule, *merely to shelter* the improper conduct of the trustees, is a circumstance that must be left to the determination of the discerning public.

The encroachment itself was the next object of attention. Its extent was measured out, and fully described to the arbitrator; as also the abutment upon the *stone facing* in *front* of Mr. Barfoot's quay, and the spikes and fastenings driven therein, near *eight feet in width*, by which the quay is considerably diminished, and the sea-room before it proportionably contracted. This was an injury too conspicuous not to strike the senses, and a trespass of too glaring a nature not to be admitted. Mr. Bedford, therefore, candidly acknowledged, that *the quantity of land* taken in and laid to the turnpike road, out of the mudlands, and the injury and loss sustained by Mr. Barfoot's quay, might be as represented. He contended, however, that the *mudlands* in this spot, were no part of Mr. Barfoot's property. He had no objection whatever to the estate called Cookman's, (*meaning Quay-Close*); and he was ready to allow that Mr. Barfoot possessed two acres of mudland *somewhere*; but that he had claimed them in the wrong place. It was true his writings *might* describe them to be situated *in the front* of his wharf and storehouses; but the whole of that place consisted of the port or haven of Fareham, and was not included in the Grant or Letters Patent of Charles I. under which authority the purchase was made. The fact was, *and which he pledged himself to bring evidence to prove*, That the two acres claimed by Mr. Barfoot, were situated at a place called Hoeford-bridge, near three quarters of a mile *below* the quay; and were some years ago converted into a saltern by Mr. Gringo.

He

He insisted likewise, that the Royal Grant, for recovering lands overflown by the sea, extended no farther *up the river*, than to Hoeford-bridge; and that therefore, Mr. Barfoot's claim of the mudlands in this spot, which was the port or haven of Fareham, and not within the limits of the Letters Patent, must of course fall to the ground.

It was demanded of Mr. Wilkes, Whether he was provided with the letters patent, for the purpose of ascertaining the spot? He answered, That he was provided with Mr. Barfoot's title deeds; and that Mr. Barfoot, *under the Rule of Court*, only considered himself bound to prove a *legal title*; and that, according to his apprehension, if the conveyances and deeds, by which the land had *before* been several times conveyed, and had been *since* quietly possessed for fifty years past, and the probate of Mr. Gringo's will, by which the same became vested in the present owners, were not sufficient for this purpose, property must be in so precarious a state, that it would be of little use to refer back to the reign of Charles I. That with respect to the haven and sea-mill, the situation of both appeared to be misrepresented. No man would pretend to call that an haven, where there was no channel, and where the whole was only a piece of low ground or mud, on the river side, which was always left dry at low water. Nor was it reasonable to suppose the Bishop's mill to be situated at one place, and the quay or wharf belonging to that mill, at

G 4

another.

another. That Fareham haven stood at the head of the channel, where the Bishop's mills and quay were *really* situated, and where a considerable body of water was always to be found, both at high and low water mark, with a spacious strand about it. To this spot, which is more than half a mile *above* these premises, the arbitrator was taken; and after viewing the Bishop's mills and wharf, and the situation of the haven and channel at this place, he returned to the Red Lion Inn, to examine witnesses; expecting of course, that the TWO DECISIVE POSITIONS set up by Mr. Bedford, namely, *That the two acres of mudland were situated at Hoeford-bridge; and, That the Grant or Letters Patent did not extend to the spot where Mr. Barfoot claimed them,* would, in the course of evidence, be indisputably proved.

Mr. Blachford declaring himself ready to hear the witnesses, the business was opened on behalf of Mr. Barfoot, by Mr. Godden, attorney, of Portsmouth Common. He recapitulated, in a summary way, the essential points of the claim he was about to establish, and produced to the arbitrator, the several title deeds necessary for that purpose, together with the probate of Mr. Gringo's will, by which the same was devised to Mr. Barfoot and Sir William Benett. He was proceeding to read the deeds from beginning to end; and began with those appertaining to Quay-close, Dock-yard, &c. when Mr. Bedford publicly declared, that he admitted the title of that estate *to be out of dispute;*
and

and that he only meant to oppose the claim of mud-lands said to be purchased under the grant of Charles I. from Richard Franklin. Mr. Godden then took up the deeds of that purchase, and was proceeding to read them, when the arbitrator interrupted him, by saying, "There would be no need of taking up time by reading the deeds, for he should not immediately make his award. That it would be sufficient for his purpose, if extracts were made of the parcels of land therein described; and also of that part of Mr. Gringo's will, by which the same were devised, which might be sent after him into the Isle of Wight." He desired however to inspect the deeds himself; and they were handed to him. In some little time he delivered them back, and declared himself satisfied *that they were the title deeds of the land in question.* He was then offered them to carry home with him into the island, instead of the extracts; but he declined receiving them, saying, that extracts would answer his purpose equally well.

Mr. Godden then produced receipts for quit-rents paid, in conformity with the covenants of the before-mentioned deeds, and delivered them to the arbitrator. He also produced Mr. Bedford's official letter, addressed to Mr. Barfoot in the name of the trustees, at a public meeting, held the 4th of February, 1784, wherein his right was acknowledged, and a compensation offered for the same. Mr. Bedford examined the letter, and owned it was his own writing. He then
turned

turned to the minutes of that meeting in the turnpike books, where an exact copy of it was entered, and signed by Mr. Bargus; although that gentleman, in open court at Winchester, positively denied, *upon his oath*, ever having heard that Mr. Barfoot's right was acknowledged at all by the trustees (*u*).

Mr. Ley, a surveyor *well known* in Fareham, and Mr. Gover, builder and surveyor, from Winchester, were called to prove, that the plans of the before-mentioned estates, then produced by Mr. Godden, were fairly and correctly taken. They both deposed, that they had carefully measured the premises, and compared the same with the respective title deeds, and that the plans exactly corresponded with them. That Mr. Ley had first measured the estates by himself; but to detect any error he might have fallen into, and with a view of being in every respect perfect in the plans, Mr. Gover and himself had jointly measured them a second time, and, on their oaths, they were correct. They swore to having examined the encroachment; that it was ninety-six feet in length, and from eight to twelve in breadth; that it stood upon part of both the estates, and was taken out of them; and that the injury to Mr. Barfoot was obvious to every one. Mr. Gover went further. He deposed, that in consequence of Mr. Bargus having *sworn* at

(*u*) This letter is printed at large in page 18, &c. to which the reader is requested to refer.—Also for Mr. Bargus's evidence to page 72.

Winchester, that this encroachment was built upon the foundation of an old quay, which went two feet and a half *further into the sea* (x), he had since examined the spot; and he declared, that there were no traces whatever of an old foundation, but that the whole was mud and gravel from one end to the other. Mr. Bargus being present, asked him how long he had known the spot. He replied, four or five years; but that he did not speak from the length of time he had known it, but from *having examined it as a workman*; and there was no old foundation of any kind; but that the encroachment was brought out upon the mud and gravel, and built up against the front of Mr. Barfoot's quay, covering near eight feet of it, and it was fastened to it with spikes and pins, in a manner unwarranted by any custom of building that he had ever seen or heard of.

Here the arbitrator intimated, that as the encroachment was in some degree admitted, he wished to hear evidence to prove acts of ownership by Mr. Barfoot's ancestor, to that particular spot.

(x) See Mr. Bargus's depositions, page 73.—Mr. Gover has again examined the spot with other assistance, since the above declarations; with a view totally to refute this pretence set up by Mr. Bargus. And he still declares that there never was any old foundation of the kind, nor any thing more than a few loose large stones thrown in for the purpose of hauling timber upon, and to prevent it from sinking into the mud.

Farmer

Farmer Edward Stone, about eighty years of age, was called for this purpose. He had been intimately acquainted with the premises for upwards of sixty years. His father was carter to Mr. Gringo, and he used to accompany him with the team. He knew the spot before any quay or wharf was erected. That persons used to land their goods upon the beach or shore, and always paid Mr. Gringo wharfage for so doing. That after Mr. Gringo had built his quay, he dug a channel in the front of it, and fenced it from the road with a gate and wall; but he still received wharfage for goods laid upon the shore on the outside of the wall, and on the side of the highway, which is called Fareham quay, *as far down as the sluice*; and that the clerk always went and took account of goods landed there, just the same as he did of those landed on the quay in the inside of the gate and wall. That no ships could come up to Fareham quay below the sluice, for want of water. That the shore all the way across from the sluice was Mr. Gringo's, as long as he could remember (y); and soon after he had built the quay, it was re-

(y) This was the oldest witness examined on either side; and his evidence goes to establish the northern boundary of Quay-Close estate, which, as was observed to Mr. Blachford in the survey, passed in a straight line from the Bishop's sluice, on the side of the turnpike road, to a post or pile in the opposite point at the side of the channel leading to Portsmouth and Gosport. The whole of the mudland or shore within these two points, before the building of Mr. Gringo's quay, was called in the old writings, Dock, and Dock-yard Close. Part of these premises have always consisted of

reported he had bought the mud farther on. Upon his cross-examination, he never heard of goods being shipped from Fareham quay, without paying wharfage; but that teams were sometimes drawn into the water in front of it, and unloaded into the vessels, for which they never paid any thing. Never heard that the Bishop of Winchester had any right there, except to the cottage and marsh on the other side of the road. Nor was there any mill at this place that he ever heard of. When he was a boy, he remembered Sea-mill stood where it now does at Lady-bridge, and that it was then very old. He remembered carrying a load of timber to repair it.

of a dock, as is apparent from Sperscott's testimony; and sloops and small-craft were occasionally built, and frequently repaired here. But whenever any vessels were laid down to calk or careen, they always paid an acknowledgment to Mr. Gringo for grounding upon the mud or shore in front of his quay, storehouses, dock-yard, &c. The following items copied from his ledger, will place this fact beyond dispute.

MR. ISAAC JURD,

Dr.

1759

£. s. d.

Feb. 10. To breaming your vessel on my hard,

0 10 0

MR. STEPHEN FARMER, of Fareham,

Dr.

1765

£. s. d.

Dec. 21. To one year's wharfage,

1 0 0

1766 To breaming your vessel on my hard,

0 10 0

Dec. 21. To one year's wharfage,

1 0 0

To breaming your vessel on my hard,

0 10 0

Entries of this kind, and for wharfage, are very numerous.

Mr.

Mr. John Page, timber-merchant, had known the spot near thirty years. He had frequently carried goods to be shipped from Fareham quay, and always paid wharfage to Mr. Gringo, except when the team drew into the water, and unloaded into the vessel. That the road called Fareham Quay was at that time so narrow, that two carriages could not go abreast; and that the water at high tide was not deep enough for ships to come up to it, except above the sluice, where Mr. Gringo had dug the channel. On his cross examination, he recollected putting down a load of hoops upon Fareham quay. That Mr. Gringo's clerk came up and demanded wharfage, which he paid just the same as upon the quay in the inside of the wall. He never heard of any right the Bishop had to the mud, but always understood it belonged to Mr. Gringo.

Farmer John Shayer, had been accustomed for upwards of fifty years, to ship goods from Fareham quay. He sometimes unloaded his team into the vessels, and sometimes upon the quay. That wharfage was always paid to Mr. Gringo, except when he drove into the water, and delivered his goods into the vessel without putting them down upon the quay or road. On his cross examination he never heard of any quay at this spot, but what belonged to Mr. Gringo; and that what is called Fareham quay, was never any thing more than the King's highway; and that instead of being wide enough for a quay, there was not room
for

for two waggons to pass each other, but that one was obliged to draw up and wait, while the other passed by. He never heard of any right the Bishop of Winchester had there, nor of any other person, except Mr. Gringo.

Mr. Richard Taylor gave evidence to the same effect; and Mr. Thomas Foster, brick-maker, was called for the same purpose, but Mr. Bedford, in order to save time, said he would admit all he had to say, since his evidence went to the same points as that of the foregoing witnesses.

Daniel Stoodley, and Joseph Hayden, two persons of Fareham, who had either worked for, or been in the service of the late Mr. Gringo, were next examined. Stoodley, when interrogated, could not remember a single circumstance relative to the premises, or any orders given by Mr. Gringo relative to persons digging mud before his wharf. In short, he knew nothing of the matter. He could not speak to any thing:

Joseph Hayden recollected, that during the time he was employed as a salt-maker by Mr. Gringo, he had heard of several persons being forbid to dig mud and gravel from before Mr. Gringo's house and wharf, but he could not identify the persons. Was not Thomas Pye forbid? and was
he

he not threatened by Mr. Gringo for having dug ballast, and for having dug a dock in the mud to lay his vessel in? *He could not recollect!* Had he not himself frequently dug mud and ballast in this spot, and paid Mr. Gringo for the same? Yes, he had. Was he not forbid to dig there any more, either for himself or any other person? Yes, and he never dug there afterwards. Did he not, when Mr. Gringo came to the spot, to forbid his digging, pay him for the gravel he had dug? Yes.

Mr. Bargus, after twisting and writhing for some time, could remain no longer silent. He begged to explain the matter. Hayden had dug ballast in Mr. Gringo's lighter, and the money he paid was for the lighter, not for the gravel; and if it had been any other person's lighter, then he would have paid the other person for the gravel, would you not, Hayden, aye?---Yes, Sir, to be sure? One question more was put to this witness; but as it was to shew an important act of ownership, it would not do to remember it. Did not you, about nineteen years ago, dig a large quantity of mud out of the channel before Mr. Gringo's storehouse and quay? He scratched his head, but could not recollect any thing about the matter (z).

Mr.

(x) To shew the dread these poor fellows were in of giving offence to the trustees and the town of Fareham, it is proper
in

Mr. Robert Porter, merchant, who occupies the dwelling-house of the late Mr. Gringo at Fareham, was the next witness. He had resided on the premises four or five years, and was well acquainted with the estate called Quay-clofe, and with the two acres of mud-

in this place to subjoin their own account of the transaction, as related by themselves, and taken down in writing, long before it was suspected they would be called to give evidence. Each account is attested in their own hand, and witnessed by an indifferent person; and it will require no great depth of penetration to discover how the facts, in this prevaricated state of their evidence, really stands:

“ Daniel Stoodley lived with Mr. Gringo, as gardener and coachman, nine years. That several times during said period, Mr. Gringo had mud dug up and taken from about his store-houses, and likewise from before his quay. That Joseph Hayden loaded the mud into lighters; and he, the said Stoodley, carted it away up into the timber yard, and made it in a mix. That this happened eighteen or nineteen years ago.

(Signed)

“ DANIEL STOODLEY.”

Witness, ROBERT PORTER.

“ Joseph Hayden, of Fareham, in the County of Hants, salt-maker, aged 60 years, says, That he has lived at Fareham near twenty-eight years, and worked as a servant to Mr. Gringo great part of his time. That he remembers wharfage used to be paid Mr. Gringo for goods landed upon his quay; but he never saw any paid. That no alteration has been made to the quay in his memory; and the trustees of the Gosport road have certainly taken in and enclosed a part of the mudlands opposite Mr. Gringo’s quay, and adjoining to it; but how much in
H “ length

mudland purchased of Mr. Franklin. He had particularly noticed the encroachment, while it was making, and was certain that part of it stood upon Quay-close estate, and part upon what was Franklin's. That the quay belonging to Mr. Barfoot had been

" length and width he does not exactly know, having never measured the same. That by doing it, it has made the road much more convenient and commodious than it was before ; as now vessels of larger burden can come up and unship goods upon it, which before they could not do ; which must be very hurtful to Mr. Barfoot's quay. That he remembers to have heard Thomas Pye was warned out of Mr. Gringo's house, for having dug a dock in the mudland before Mr. Gringo's house, wharf, and quay, to lay his vessel in ; and that he was obliged to fill it up again ; and that Pye and his wife both told him so.

(Signed)

" The mark X of

" JOSEPH HAYDEN."

Witness, R. PORTER, Junr.

But to put the matter entirely out of dispute, as to Hayden's having purchased gravel and mud of Mr. Gringo, whenever he was employed by masters of vessels to procure them ballast or manure, the following entries are copied from Mr. Gringo's Ledger :

1768	JOSEPH HAYDEN,	Dr.
	From August 3, to December 23.	£. s. d.
	To 20 boat-load of MUD, <i>dug out of my channel,</i>	1 0 0
	To 34 tons of ballast, - - - - -	1 14 0
	To 25 tons of ballast, - - - - -	1 5 0
	To 38 tons of ballast, - - - - -	1 18 0

These items are balanced on the opposite side, " by cash in full."

injured

injured to the amount of twenty pounds per annum and upwards, ever since the encroachment had been made, as appeared from a regular account of wharfage produced before the arbitrator by this witness, which he had kept both before and since the encroachment took place.

Mr. Thomas Parsons, Coal Merchant at Fareham, also deposed, that he had known Mr. Barfoot's quay many years. That before the road was altered by the Trustees, he would have given twenty pounds a year for it; and he believed there were those that would have given thirty pounds per annum; but now it was not worth ten; at least he would not give that sum for it, because every body loaded their goods upon the side of the road.

The Rev. Philip Griffin, LL. D. Rector of Warnford, deposed, That being a trustee of the Gosport turnpike road, he was present at several of the meetings, when the dispute relative to Fareham quay was the subject discussed. He had attended on the 5th of May, 1785, and he believed every subsequent meeting to that day, viz. (the day of the reference.) He stated, that Mr. Marett attended as Mr. Barfoot's attorney, on the 5th of May, 1785, to know their final answer relative to what satisfaction they intended to make to his client. And on some objections being made to Mr. Barfoot's title, Mr. Marett offered to remove a stone or saw a pile, merely to try the right;

which this deponent thought very fair. The other trustees said, he might do what he thought fit, they did not care; insisting that the land was not the property of Mr. Barfoot; some asserting it belonged to the Bishop of Winton; others to the town of Fareham, and others again to the Mayor and Corporation of Portsmouth. That upon this, he observed to the trustees, he had always understood it was wise to set up but one title to any one property in litigation; and feared that we had no good one when we sat up so many. Then addressing himself pointedly to Mr. Bargus, said, "And you, Sir, was present."

He also deposed, That on the 16th of June, 1785, he had censured the conduct of the acting trustees, who had been concerned in the Fareham business; and offered to prove the illegality of their conduct by the turnpike acts; but they neither would permit him to read the clauses alluded to, nor would they do it themselves. Dr. Griffin's evidence contradicted what Mr. Bargus had said at Winchester assizes. And Dr. Griffin appealed to the turnpike proceedings in justification of his evidence; which, though in one instance disputed by Mr. Bedford, was confirmed by the books then produced; and the whole of the said evidence was afterward acknowledged to be true, by Mr. Bedford himself. The arbitrator said, "To be sure the trustees had not behaved well to Dr. Griffin; but all this only tended to shew the state of the dispute at that time. He did not want to hear any thing but
what

what related to the title." Mr. Godden, in reply, said he conceived the title was established; and, after a few remarks, closed the evidence on the part of his client.

It was demanded of the arbitrator, Whether the title adduced in favour of Mr. Barfoot, was not sufficiently clear and satisfactory? He replied *in the affirmative*; but added, That he would hear what **THEY** had to alledge against it; and desired Mr. Bedford to bring forward his evidence. To this it was objected, That it would be going *out of the rule of court*, which required nothing more of Mr. Barfoot than to produce a title to the spot in question, and the business was at an end. The arbitrator replied, That was a matter left *to his judgment*; and that he should now hear what Mr. Bedford had to offer on behalf of the trustees!

Mr. Bedford then rose in defence of the *triple alliance*---to *justify* the trustees in seizing the land without a jury---to *establish* a *prescriptive* title in the Bishop of Winchester---or, to *prove* a *right* in the town of Fareham to a free Corporation quay. The task, in a judicial court, would have been arduous; and really, to give Mr. Bedford his due, he conducted the matter with a degree of *ingenuity*, that in a better cause would have done him credit.

His first witness was Mr. Joseph Mant, of Havant; or, as Mr. Bargus more emphatically styles

him, "the Bis Wooder." This gentleman undertook to remove the charge from the humble door of the trustees, to the episcopal palace of the See of Winchester. He was to prove that this encroachment was made by the Bishop, and not by Mr. Bargus. Let us see how skilfully he does it.

He swears, that the trustees applied to the late Bishop to repair the sluice. That he was in consequence directed to examine the spot, and to report whether such repair was wanting. He did so; and *secures an order to fell timber for the purpose*. But a circumstance of jealousy still hung about Farnham Castle, and the order was superseded by Sir Chaloner Ogle. The Bishop dies;---and Mr. Mant again orders the repair to go on. In this crisis of the business, Mr. Bargus came to Mr. Mant, and complained that the road was so dangerously narrow in this place, that *he proposed to widen it upon the mud*, if Mr. Mant would but carry the sluice and bridge out further; and that it should make no difference in expence to the Bishop, for the trustees would pay for widening and filling in the road, out of the trust money (a). Mr. Mant

(a) Mr. Bargus, agreeable to this proposal, took the chair at the next turnpike meeting, and after holding forth on the importance of a measure, pregnant with so many advantages to the Town of Fareham, moved, That the expence of widening and enlarging the turnpike road over Fareham quay, amounting by estimate to thirty pounds, be paid out of the monies arising from the tolls payable on the turnpike road.—*Vide entries in the turnpike books.*

agreed

agreed to this proposal, because he *thought*, and still *believes*, that the land was part of the Bishop of Winchester's manor, and that the Bishop would have no objection. Besides, Mr. Bargus had told him it was the Bishop's right to repair the stone facing *all along the quay or causeway*; and, as it was in a ruinous state, it was very immaterial in point of expence, whether it was rebuilt upon the *old* foundation, or brought *further out* upon the mud. That the work was then carried forward, and compleated as it now stands. That during the time it was in hand, he was taken extremely ill, and could not attend; he therefore left it wholly to the management of Mr. Bargus, and the other trustees, *who paid for widening and filling in the top of the road, out of the turnpike money*. On his cross examination, he confessed that it was not customary for the Bishop to contribute any thing more than timber toward these repairs. Who then paid for the new stone facing to support the quay? Why he had felled as much timber as, when sold, *paid the whole expence!* Had the bridge ever been altered, or widened, or removed from its accustomed foundation before? or had the spot undergone any repair of this magnitude within his memory? No, it had not (*b*).

The

(*b*) Such is the tenor of Mr. Mant's evidence; and how far he has succeeded, in proving the WIDENING of this road and quay, to have been the act of the Bishop of Winchester, will require no depth of reasoning to determine. That the Bishop gave directions for *repairing* the sluice, is out of all question; but that he ordered the road or sluice to be *enlarged* and *widened*, or extended beyond

The next object was to prove *a right* in the inhabitants of Fareham, as tenants of the Bishop, to a free quay *on the spot where this encroachment was made*. For this purpose, Mr. Green, Mr. Parsons, Mr. Sherwin, and other tradesmen of the town and neighbourhood of Fareham, were severally examined. They deposed, That Mr. Gringo, when he built his quay, had en-

its *ancient limit*, is by no means true; nor was any such order *produced*, or attempted to be *proved*, before the arbitrator. It is certain the late Bishop died while the matter was in a state of *uncertainty*; and the subsequent transaction appears, as well from the foregoing evidence, as from the tenor of the present Bishop of Winchester's letter to Mr. Barfoot, page 63, to have been the *voluntary act* of Mant himself, in *confederation* with Mr. Bergus and the trustees. That this is the true state of the case, will be more apparent, if we reflect that it was not in the power of the Bishop, even admitting him to be Lord of the Manor, *to have given such an order*, without the consent of his tenants. No Lord can alienate the tenant's right; and Mr. Bedford has never once told us that his Lordship's tenants were consulted upon the occasion. But there are other circumstances tending to prove this *widening* to have been the act of Mr. Bergus, which admit of *no refutation*. He employed Nicholls and Stevens, who had undertaken the repair, to make the estimate for widening and filling in the road; and upon their estimate he framed his motion at the turnpike meeting, for carrying the same into execution. This motion having unanimously passed, Bedford writes Mr. Mant upon the occasion as follows: "The Trustees of the Gosport road, at their last meeting, having resolved to carry the plans into execution *agreed on by YOU and Mr. BARGUS*, for widening the road over Fareham town quay, have made an order, that I, as their treasurer, should pay you thirty pounds, on that account, whenever you thought proper to apply to me for same. I pre-

" same

encroached upon and contracted the Bishop's quay. That Fareham quay was always a free quay. That they had shipped some thousand loads of bricks, tiles, manure, &c. from Fareham quay, and never paid any wharfage. That Mr. Gringo, they believed, demanded wharfage, and some people had been foolish enough to pay him; but they never did, nor never would.

"fume you will not order this work to be begun till this nipping season is past; but whenever you choose, the above money shall be paid by

"J. BEDFORD."

Now does it appear that the Bishop of Winchester had any thing to do with this bargain? or that he was even consulted upon the propriety of carrying it into execution? I pronounce flatly that he was not; and that no circumstance has been, or can be adduced, to prove his concurrence with the measure.—But when Bargas was served with Mr. Barfoot's action of trespass, he became sensible of his officiousness, and was much alarmed for the consequences. He desired Mr. Bedford to *contrive, if possible*, to justify his conduct under a supposed title in the Bishop of Winchester, rather than by the pretence of having acted under the authority of the Gosport turnpike act, which, it was feared, would not shelter the proceeding. An opinion of counsel was taken on the subject, and we have extracted as much of it as replies to the enquiry, and as appears necessary to establish the fact:

O P I N I O N.

"After the best consideration I have been able to give this case,
 "I think it most adviseable to plead *the general issue only*. Nicholls
 "and Stevens, (the workmen) seem to have acted under a *two-
 "fold authority*, viz. that of the Bishop, in *repairing the quay or
 "embankment*; and that of the trustees of the turnpike, in *widening*
 "and

would. They had known many vessels come up to the quay and discharge their cargoes, but never knew them pay wharfage; except once, a vessel loaded with oysters came up, and Mr. Gringo sent out to demand wharfage, and the man paid him in oysters. That the quay, and all the waste land and mud adjoining to this place, *belonged to the Bishop of Winchester*. That Mr. Green's father had for many years been accustomed to ship off large quantities of goods from the Bishop's quay, without paying wharfage; and that Mr. Gringo brought an action against Mr.

"and securing the road. Mr. Bargus had also both these objects in view, in the part he took in the business. But the principal, if not the only inducement for carrying the embankment farther into the sea, and beyond its ancient limit, seems to have been to widen and secure the road. And if so, then all the plaintiff (Mr. Barfoot) complains of, must have been done under the authority, or at least under colour of the turnpike act. This act gives to persons sued for any thing done in pursuance of it, their election either to plead specially, or the general issue, and give the special matter in evidence. Under this act, I think the general issue must in most cases be the safest plea; for where a defendant pleads a special plea, even with the general issue, I apprehend he would be precluded from giving any other special matter in evidence than the matter he so pleads. But even, if the defendants, (Mr. Bargus and the workmen) should not be able to shew, that they proceeded under the authority of the act; yet I do not see that they can plead any better plea than the general issue, because they must in that case depend rather on the weakness of the plaintiff's (Mr. Barfoot's) case, than on the strength of their own.

(Signed)

"SAMUEL MARSHALL."

Serjeant's Inn, Fleet-street,

28th Jan. 1786.

Green's

Green's father, to recover the money; but when it came to Winchester assizes to be tried, Mr. Gringo thought fit to drop it, without going into court. And from that time to the present, they had continued to ship and unship goods from the same quay, and that no wharfage had been since demanded (c).

The

(c) It must be remarked, that these witnesses were highly interested. They reside contiguous to the spot, and their avocations are such as to make the article of wharfage a matter of importance to them. They were principals in the cause, and were to be injured or benefited by its success. For this reason, Mr. Blachford *ought not* to have examined them; especially as he was reminded at the time, That their evidence could not be heard in any of the courts of law. This was not urged from motives of fear for the safety of Mr. Barfoot's title, for nothing they could alledge, goes in any shape to invalidate it; but the usage of the courts ought surely to govern every enquiry where property is at stake, without *partiality, or respect to persons*. And however these witnesses have deliberately sworn, That they never paid Mr. Gringo wharfage, I take upon me positively to affirm, that Sherwin, Green, and Parsons, have all of them accounts upon Mr. Gringo's books, by which it appears, beyond the power of contradiction, that from the year 1741 to 1769, they have constantly paid Mr. Gringo wharfage for malt, corn, bricks, tiles, manure, &c. Should the memory of these gentlemen *still be treacherous*, they may have access to the books whenever they please; or we will even print the accounts, to satisfy them of the fact.

With regard to the action between Mr. Gringo and Green's father, it will be proper, since Mr. Bedford has introduced the circumstance, to state the particulars of it; especially as it tends to open the eyes of the public, with respect to the *validity* of the Bishop's

The next witness called, was John Cluer, by trade a bricklayer, and upwards of seventy years of age. This man had frequently been employed by Mr. Gringo;

shop's claim.—It was pretended by a Mr. Reynolds, who, in the year 1704, obtained a lease of the Bishop's Mills, that Fareham quay belonged to the Bishop of Winchester; and that all rates, profits, and emoluments whatsoever, thereunto belonging, were granted in this lease; and upon this authority, he had for some years received wharfage. Mr. Gringo holding the sole right of wharfage on the shores of Quay-close, extending as far as the Bishop's sluice, thought it adviseable to purchase the *Bishop's right of wharfage* from Mr. Reynolds. The parties agreed; and shortly after the same was assigned over to Mr. Gringo. He was now determined to see how far this right of a wharf and quay upon the public road, was well or ill founded.—With this view, he enforced the payment of wharfage upon that part said to be the Bishop's quay. Mr. Green, the father of the above witness, amongst many others, insisted that neither the Bishop, nor any of his tenants, had a right of wharfage or keyage there; and he refused to pay it. An action was then brought by Mr. Gringo, founded on the Bishop's right; but when the lease granted to Mr. Reynolds came to be minutely inspected, and the Bishop's claim thoroughly examined, it was found he had no title whatever; and Mr. Gringo of course stopt the proceedings. To authenticate this statement, we subjoin the following extract from the lease granted to Mr. Reynolds; together with Mr. Green's proofs, which were at that time considered by the gentlemen of the long robe, perfectly decisive against the Bishop's claim to this spot either as a wharf or quay.

“ The plaintiff, John Gringo, has laide his action at forty
 “ pounds damages, for warfage and keyage on the Bishopp's warfe
 “ at Fareham. But the defendant thinks he will not be able to
 “ main-

Gringo; he had helped to make his salterns, and to build his quay; and this was the witness, by which Mr. Bedford *seriously* undertook to prove, That Mr. Bar-

“ maintaine his action, he having no right to demand keyage or
 “ warfage at this place. 'Tis true the plaintiff, having gott an
 “ assignement of this warfage or keyage from Mr. Reynolds, out
 “ of his lease, but which the said Reynolds had no power to assigne,
 “ has forced severall people to pay him, but in their own wronge;
 “ for this key or warfage, as pretended, is only a common high
 “ road from all parts of this country to Gosport and Portsmouth,
 “ and the whole of it not more wide then for two waggons to goe
 “ abreast. And therefore 'tis all used commonly as a high way;
 “ and the Lord of the Manor of Cams repaired some part of this
 “ road or key, but never demanded any warfage; and it can be only
 “ trespasse for lying our goods on the road. In the next place, wee
 “ say the Bishopp, (under whom the plaintiff, as assignee to the
 “ Bishopp's lease, and the only part which the plaintiff has of the
 “ lease, pretends to demand these dues for warfage) cannot nor
 “ has not, as wee conceive, granted to the plaintiff any right
 “ whereby to demand these dues now sued for; for the lease which
 “ they must prove, and which we have a copy of, runns thus:
 “ This indenture, &c. made the fifteenth of August 1704, between
 “ Peter late Lord Bishopp of Winton of the one part, and Robert
 “ Reynolds of the other part, whereby he grants and letts, All
 “ those two severall water-mills, called or knowne by the name of
 “ *Wallington-mill*, and the other of *Sea-mill*, lying and being in the
 “ *mannor of Fareham* in the County of Southampton aforesaid; and
 “ all manner of houses, and edifices *to the same mills*, or either of
 “ them belonging; together with all waters and water-courses,
 “ flood hatches, streams, ponds, pools, and lakes *belonging to the*
 “ *said mills*, or either of them, from the low water mark unto the
 “ full sea mark; together with all the WARFAGE and free fishing
 “ in

Barfoot's two acres of mudland, purchased of Franklin, under the patent of Charles I. were situate at Hocford-bridge, and had been converted into a saltern

“ in and upon the said mill ponds, pools, streams, and lakes BE-
 “ LONGING TO THE SAID MILLS, or either of them, at all
 “ times duringe the terme in these presents declared. And also the
 “ mulcture and grists of all and singuler the tenants of the said
 “ mannor of Fareham; together with all profitts and advantages,
 “ and also all commodities whatsoever, which duringe the said
 “ terme shall arise, come, grow, increase or happen, in, by, or
 “ upon the said mills and premises, or any or either of them; to-
 “ gether also with all ways, paths, easements, and appurtenances
 “ thereunto belonging or in any wise appertaining. To hold for
 “ three lives at certaine rent, and with a covenant for the Lessee
 “ to repair all premises, and likewise *the bridge or carusey near*
 “ *Lady-bridge*, being allowed rough timber by the Bishopp, with
 “ liberty on non-payment of the rent, to make distresse, with a
 “ letter of attorney to give possession, being a freehold lease.”
 “ This is the substance, which see if occasion. And this being a
 “ grante of mills and premises *soe farr distant as halfe a mile and*
 “ *better from this key*, ergo, it is independant from it, and can't
 “ be granted. Besides, the *assignement* states, “ *keyage and warfage*
 “ *at Fareham key*,” when there is no such grante in the lease, nor
 “ of any warfage or key, except that belonging to the mills at
 “ the mill ponds at Lady-bridge. Nor is there, either in the
 “ Bishopp's lease, or assignement to the plaintiff, any covenant
 “ for either of them to repair the key from whence the warfage
 “ is now demanded. Nor is this key once mentioned in any part
 “ of the Bishopp's lease. And there is a warfe at the mills for
 “ shipping and unshipping corne, meal, flower, chalke, &c. and
 “ is soe used there. Vide plans of the river, from the mill up to
 “ the mill-pond pool, &c. belonging to the Bishopp of Winton;
 “ and

tern by this witness, many years ago, by the order and direction of Mr. Gringo. Being sworn, he deposed, That he remembered Fareham quay long before

“ and of the draught of the channel from the mills downe to this
 “ key, above three quarters of a mile; and from the key to
 “ Wicor marsh, near two miles farther below, and all the
 “ Royalty of Col. Chaundeler, Lord of Cams. The river,
 “ ponds, pools, lakes, &c. from the mills to this key, and
 “ most of the waste mud lands on both sides thereof, (which are
 “ near a mile) belong to the mannor of Cams, and a lease lately
 “ thereof is lett. And the Lord of Cams has a house upon this
 “ key, which is a part of his mannor, which is granted lately to
 “ the plaintiff (Mr. Gringo) for three lives, having purchased it
 “ of a former tenant, one Isaak Jurd; and therefore the Lord of
 “ Cams repairs part of this key, and the Bishopp of Winton has
 “ also a house upon the key, and marsh lands above it, which was
 “ granted to Mrs. Clements for lives, on a lease separate and
 “ distinct from the mill leases; and she on her owne account re-
 “ paired part of this key, and the Bishopp other part, and the
 “ sluice to lett in and out the water from the said marsh-land; or
 “ else it would be worth nothing. Now to prove this never was a
 “ key, we have Mr. John Horner, who has knowne the place for
 “ fifty years and upwards, and says there was never any crane
 “ upon it to make it a key. That it is a cause-way-bridge and
 “ narrow common highway, and a very considerable road, but not
 “ above seven yards over, and not fitt to be barred up by landing
 “ of goods there, it being the high road; and that it has been al-
 “ wayes jointly repaired by the Lord Bishopp, his tenant of his house
 “ and marsh, and Col. Chaundeler as Lord of Cams. And proves
 “ from the mills to the key is above halfe a mile; and that the
 “ mill-ponds, lakes, and free fishing, &c. belonging to the Bishop,
 “ are *above* the mills; and that the royalty of the river, &c. from
 “ the

fore Mr. Gringo's quay was built, and when there was no other quay at Fareham. That it originally extended as far as Mr. Gringo's gateway northward,

" the mills to this key, and soe a mile or two below the key, belongs
 " to the mannor of Cams; and that *this key is not in the Lord's*
 " *ship of Fareham*, and cannot be granted in the Bishopp's lease;
 " for he was a tenant at the *presentments thereof at Cams Court*, in
 " the year 1706, which call for it occasion. He also proves the war-
 " sage place belonging to these mills is at the mills, and that this
 " key is independant of the mills, and not in that or any other
 " grant. All the same things will be proved by Mr. Humphrey
 " Strugnell, Mr. Robert Day, Mr. George Head, Mr. Isaak Jurd,
 " Mr. Benjamin Woodman, Mr. Richard Osland, Mr. Edward
 " Garland, Mr. John Jurd, Mr. John Newman, Mr. Philip A-
 " dams, David Langer, Joseph Barr, William Percy, Ralph
 " Newman, Thomas Lunn, Thomas Cox, and Thomas Booker.—
 " Note, that plaintiff depends very much in their evidences in
 " provinge that the owners of the mills have from time to time
 " repaired the key—*ergo*—warfage due to them. But in answer
 " wee say, 'tis more than they are obliged to do by their lease; and that
 " they have had timber from time to time for soe doinge, because
 " it is the Bishopp's right to repaire it, on account of his house and
 " *merse at this key, and not on account of the mills.*"

The above extract is copied *verbatim* from Mr. Green's brief, delivered back by his Counsel, Mr. G. Eyre, in August, 1726. It was thought expedient to prefer this statement, the better to shew, with what indefatigable spirit, and by what decisive evidence, Mr. Green had proved, to the satisfaction of the claimant, that the Bishop of Winchester *had no pretensions whatever to this spot*. And it is really shocking to remark, that the son of this very gentleman, at a period so distant, and under the solemn sanction of an oath, should now come forward, and attempt to prove his own father a liar!!!

and

and as far as the posts southward. That Mr. Gringo had then no gateway, but that waggons used to draw down all along *in front of Fareham quay*, and along the shore before his dwelling-house, to take up or set down goods that were to be shipped off. That they could draw into the sea at one end of Fareham quay, and come out at the other, and go upon Mr. Gringo's shore, or into the highway again. That the front of Fareham quay consisted of a stone wall, from one end to the other. That when Mr. Gringo built his quay, he pulled down that end of Fareham quay next his land, and filled up the space where the waggons used to draw in, and took the stones that came out of the wall of Fareham quay, to front his own quay with. That the whole of his own quay was an encroachment upon Fareham quay, and upon the Bishop's waste, and that where Mr. Gringo's gate and wall is now put up, stood the wall of Fareham quay formerly. That all the land hereabout was the Bishop's. That boats and vessels always landed goods and passengers upon Fareham quay, and all along the beach as far as Quay-lane, and upon Mr. Gringo's beach, without paying any thing; because there was a foot way through Mr. Gringo's yard to Hoeford. That he was employed by Mr. Gringo at his falterns at Hoeford, and that some mudland had been taken in to enlarge the falterns, by Mr. Gringo's order. On his cross examination he was asked, Whether he could tell, by what authority Mr. Gringo took down

the stone wall of Fareham quay, and converted the materials into a facing to his own quay? No. All he knew was, That Mr. Gringo did so; for he was present, and saw the stone wall taken down, and used in facing Mr. Gringo's quay. Did he suppose, that if the wall had not been Mr. Gringo's own, and the materials his property, as well as the land and road he filled up, when his quay was first set out, that he would have been suffered by the Bishop of Winchester, or by the town of Fareham, to have gone on with it? or that it would not have been presented at some of the Bishop's courts? He could not tell. No body did interfere that he ever heard of. Pray, when this saltern was made at Hoeford-bridge, how many acres of mudland were used for that purpose? There was no saltern made. It was only enlarged. There were only a few yards taken in at one end. And do you undertake to say, that the land you so took in, though only a few yards, was any part of the mudlands purchased by Mr. Gringo of Mr. Franklin? No, he knew nothing of that. Nor whether the mudland sold by Mr. Franklin to Mr. Gringo, was situate at Hoeford-bridge? No, he knew nothing about it (d)!

Mr.

(d) This witness, much against his intention, seems to have given very strong evidence in favour of Mr. Barfoot. If we compare his depositions concerning the stone wall against the bank or road, with the paper writing in page 84, signed by Sperthott, we shall find both accounts precisely agree. At that time, the end of Quay-close estate next the sea and road, had no other fence than

Mr. Corte, the ingenious and celebrated iron-founder, was brought to prove, that Mr. Barfoot's quay could not be injured to the amount stated in Mr. Porter's evidence; for that he had himself rented it upon a lease for five years, before this encroachment took place, *and he never made five pounds of the wharfage in the whole time!* Even Mr. Bedford stood aghast at the singularity of the assertion; and, after a pause, asked Mr. Corte, Whether he did not mean, *five pounds a year*, instead of *five pounds during the whole term*? No; he meant the whole term. A question from Mr. Godden set the matter right. He asked Mr. Corte, Whether he occupied the quay for the purpose of making an emolument of the wharfage; or whether it was used only for his own private business? He answered, That while it was occupied by him, it was used only for his own business. That he

than this stone wall. Spershott's words are, "*and the fence wall next the highway called the key, always belonged to Dock-yard Close to low water mark,*" for which reason Mr. Gringo, agreeable to Cluer's story, pulled it down when he built his wharf, and used the materials. A more express act of ownership could not have been proved; and thus we see, an officious attempt to invalidate the property of another, defeats itself, and establishes the very claim it was intended to destroy. It would have turned out much the same, with respect to the mudland having been converted into a saltern, had Cluer been hardy enough to go through the evidence he had stipulated to give. But this was too much; particularly after the leases had been laid before the arbitrator, in which was a covenant, binding the purchaser "not to convert the mud-land into a saltern, on pain of the contract becoming utterly void, and of none effect." *See a copy of the deed hereafter subjoined.*

paid twenty-five pounds a year for it, and would have taken a fresh lease, but Mr. Barfoot wanted to raise the rent. To *strengthen* Mr. Corte's evidence, and to prove that Mr. Barfoot's property *was not injured*, Mr. Bedford solemnly declared, that Mr. Barfoot's quay was used more *SINCE* the road had been widened, than it ever was *BEFORE* ! for the trustees would not suffer *manure*, nor any thing that was liable to *obstruct the road*, to be laid upon Fareham quay ; and therefore people were *now obliged* to use Mr. Barfoot's quay instead of the other.

Thus ended the *viva voce* evidence opposed to Mr. Barfoot's title ! And notwithstanding it was so *replete* with *clear* and *consistent proofs* of the Bishop's *superior claim* ; and furnished so many *cogent* and *unequivocal arguments*—that Mr. Barfoot had *no title whatever* ; yet it was *still* considered *too feeble* to ensure *victory* ; and therefore the Bishop's court-rolls and registers, for almost four hundred years back, which had been secretly posted as *un corps de reserve*, were now brought up to support the *weak* and *non-effective* parts.

Upon opening the records, it was contended, that under the rule of court, which governed this enquiry, the evidence of the court rolls and registers was inadmissible. That the Bishop of Winchester was clearly no party in the cause---that his title was not within the submission---and that the Court of King's Bench could not hear such evidence. Mr. Blachford replied, That
he

he sat there as SOLE ARBITRATOR. That he did not conceive himself *bound* to adhere strictly to the rules of any particular court; but that his power extended to the usage of the *courts of equity*, as well as of *common law*; and that therefore he should certainly hear every thing they had to offer as evidence !---Mr. Barfoot, not being present himself to stop the proceedings, Mr. Godden, his attorney, could not restrain them from going on.

The court-holders of the Diocese, Mr. Serle and Mr. Ridding, produced and read from the court-rolls several presentments relating to the bridge upon Fareham quay; stating that the same was out of repair, and that it was customary for the Bishop of Winchester to repair it. The next thing produced, was called by Mr. Bedford, The lease of Sea-mill, said to have been granted to one Beeston in the time of Queen Elizabeth, in the year 1594, long before the mud patent was made; and that Beeston removed this mill from Fareham quay to Wallington (e), from which time it had been called *the Tide-mill*. The Rev. Dr. Griffin remarked, that there must be some mistake about this matter; for he had referred back many years in his enquiry concerning the

(e) Wallington is a precinct of Fareham, situated on the other side of the town, where the Bishop's mills have always stood. It is separated from the channel or haven of Fareham, by a causeway and bridge called Lady-bridge, which divides the manor of Fareham from that of Cams, and is the extent *southward* of the Bishop of Winchester's jurisdiction.

mills, and, by what he could learn, *Sea-mill* had always stood at Wallington, close adjoining to the *Tide-mill*, and that they were both as under one roof. Mr. Bedford, rather hastily and abruptly told Dr. Griffin *he was wrong*; adding, that he was sure *Sea-mill* stood upon Fareham quay, and had been removed to Wallington, and was now called the *Tide-mill*. Mr. Serle was desired to trace the mill account through the registers, in order to clear up the matter. He referred back as far as the year 1410, and found the two mills exactly as stated by Dr. Griffin, to be situated at Lady-Bridge, both under one roof, and that the quit-rents had for so long continued with little variation: Dr. Griffin very properly asked Mr. Bedford, Who was wrong now? And the arbitrator himself told them, he thought they might as well shut up their books. They did so, and here the enquiry ended.

Before the Court broke up, Mr. Bedford promised the arbitrator, to send him an office copy of the Letters Patent of Charles I. to convince him the mudlands were not situated where Mr. Barfoot's title deeds described them to be. And Mr. Godden, on behalf of his client, promised to send extracts from the title deeds, and from the patent also, in order to confirm that claim, which, he observed, the whole of Mr. Bedford's evidence had not been able to shake. The following are copies of the papers sent by Mr. Godden to the arbitrator's house in the Isle of Wight.

AB-

ABSTRACT of Mr. BARFOOT's TITLE to
QUAY-CLOSE ESTATE.

26 Aug. 34 Cha. 2. 1682.

INDENTURE of four parts, between John Osborne, and Elizabeth his wife, William Penford, and Ann his wife, and John Penford, and Patience his wife, of the first part; Culverwell Needler, of the second part; John Worledge, of the third part, and Roger Gringo, of the fourth part; whereby the said Osborne and wife, and the said Penfords and wives did covenant with the said Gringo to levy a fine of all that close of pasture ground, lying and being in the Parish of Fareham, in the County of Southampton, containing by estimation six acres, (more or less) adjoining to a Close there, called Cookman's and lying on the east side of the *King's highway* (f), leading from Fareham aforesaid to Gosport; with the wharf, dock-yard, and all and singular posts, piles, planks, ways, watercourses, easements, profits, landing places, emoluments, privileges, commodities, and advantages whatsoever into the said close of pasture ground, or any part thereof, belonging or in any wise appertaining thereunto, or with any part thereof, used, occupied, or enjoyed as part, parcel,

(f) In the year 1682, when these writings were made, the spot now called "Fareham Quay," was known by no other appellation than the King's highway. Its derivation has been traced back, and arose from no other circumstances than those stated in the note, page 32.

or member thereof, said deed declares the uses of said fine, and a recovery to be suffered to be to the use of said Gringo, his heirs and assigns for ever.—28 Nov. 34 Cha. 2. 1683.

EXTRACT from LETTERS PATENT, granted
by CHARLES I. for recovering LANDS subject to
be overflown with the Sea.

14th July, 1629. 4th Cha. I.

THE Letters Patent recite, “ That a commission had been granted in the first year of his Majesty’s reign, on the 13th of February, to Thomas Fanshaw, Surveyor General of honours, castles, lands, &c. in the county of Southampton, to Sir Daniel Norton, Lord Lieutenant, and others, or to three or two of them, to survey and search out, by the oath of good and lawful men, &c. all and singular ports, creeks, lakes, and lands, which antecedent have been surrounded and overflown by the sea, and which lie near and abut upon the Town of Emsworth, Town of Langston, Isle of Hayling, Drayton Mersh, Town of Wymering, Isle of Portsea, Castle of Porchester, Port of Portsmouth, *Fareham Haven*, quondum locum vocat, Hoeford-bridge, Wallington bridge, Town of Gosport, Castle called Haslerworth, with Brown Down Beacons, Town of Lymington, Bolder-bridge, Bulwark’s-bridge, a certain port called Key Haven, Start Lake adjoining to the chapel or beach, Hurst Castle, or some of them, includ-

including the Port of Lymington, called Quay Haven, Pennington Bay, Start Lake, with all other lakes, creeks, and lands, within the passage of Lymington, and to *enquire whether such lands can be recovered from the sea or not, and how many acres; and whether it can be recovered without doing damage to any one, and to whom;* and if it will be for the benefit of the ports, &c. and the encrease of the revenue; and to return this commission before the Barons of the Exchequer. The inquisition herein set forth, was taken at the Town Hall of Winton, 20th April, 2 Charles I. upon the oaths of thirteen persons, who say, that some of the aforesaid lands, in the said commission mentioned, extend from Emsworth, *and from the Town and Castle of Porchester further extend westward, ascending Fareham Haven as far as Hoeford-bridge; and so northward, ascending by the Port of Fareham to the bridge called Watlington-bridge, near the Town of Fareham aforesaid, including all lands overflown, and PART OF THE SAID PORT OF FAREHAM, and from Hoeford-bridge east-south-east to the Town of Gosport, &c.* That all the little ports, creeks, lakes, and part of the great ports, are specified and described in the two maps of survey, and in all amount to — acres of land overflown; and that all is contained in the two maps of survey, amounting to 1050 acres; and that the acquisition of the same *will do no damage to any one,* and may in future be of advantage to the recoverer. The maps of survey were returned with the inquisition into the Exchequer. Recites further, that the king's father had been well and faithfully served by Robert Pamplin,
now

now dead; and for the love of him he did intend and promise him, in his life time, to grant to him, and his heirs, and assigns, the said premises. In pursuance of which royal promise, Pamplin and Mary Wandesford, widow of George Wandesford, one of the ——— and heir apparent of Pamplin, and William Wandesford, of Gray's Inn, the husband of Margaret the other daughter of Pamplin, had spent large sums of money in the examination of the commission, and the said Pamplin died before Letters Patent could be granted him. In consideration whereof, and of some expence Wandesford had been at about inclosing, and for divers other causes, grants to said Mary Wandesford and William Wandesford, their heirs and assigns for ever; also grants all the fishery thereof, and all tythes, for seven years next after enclosure, that it shall be lawful to recover and enclose the same, as well against the sea as against any other place, without disturbance of any person or persons whomsoever; and to make any bank, sluice, or cut, and to hold to them in fee, as of the manor of East Greenwich, in the County of Kent, in fee and common soccage, at the rent of 1d. per acre, and 4d. for every quarter of an acre banked in and recovered, from the date, to St. Andrew's, 1630, and an halfpenny for the other eight parts of an acre banked in within that time, and for all the rest, 4d. per acre (g).

(g) The original Letters Patent were produced in Court by Mr. Barfoot, when the indictment came on to be tried at Winchester; but, as they were not within the submission of this reference, it was not thought necessary to bring them.—The above is a faithful abstract, as may be seen by referring to the original, now in the hands of Richard Fezard Mansfield, Esq. at Ringwood.

AB-

ABSTRACT of Mr. BARFOOT's TITLE to
the TWO ACRES of MUDLAND.

BY Letters Patent, dated 14th July, 1629, 4 Cha. I. his said Majesty did grant unto Dame Mary Wandesford, widow, and to William Wandesford, Esq. all the lands furrounded and overflown with the sea, or subject to be overflown with the sea, in the County of Southampton, amounting to 1050 acres, as specified in the said Letters Patent, by inquisition taken at the Guildhall of the City of Winchester, the 20th day of April, in the 2d year of the reign of his said Majesty; which said lands extend from Emsworth, and from the Town and Castle of Porchester, as far as *Hoeford-bridge*, and *northward by the port of Fareham* to the bridge called *Wallington-bridge*, near the Town of Fareham aforesaid, including all lands overflown, or subject to be overflown with the sea, and *part of the Port of Fareham*, and from Hoeford-bridge east-south-east to the Town of Gosport, &c.

One moiety of the mudlands in the said Letters Patent contained, was afterwards purchased by William Tindall, of St. Martin's in the Fields, in the County of Middlesex, Esq. of and from Edmund James, and Margaret his wife, by lease and release, dated the 30th of June, and 1st of July, 1683, which Margaret was one of the daughters and co-heirs of James Blanchard, Esq. the heir and successor of the said Patentees. And the said moiety was afterwards conveyed by the said
Wil-

William Tindall to Edmund Perkins, by lease and release, bearing date the 18th and 19th days of March, 1697.

The other moiety of the said mudlands, in the said Patent mentioned, was conveyed by Mary Blanchard, heretofore of Romsey, in the said County of Southampton, who was the sister of, and co-heiress with, the said Margaret, to James Young, late of Ringwood, in the said County, by lease and release, bearing date the 15th and 16th of May, 1694, in trust as follows, viz. one moiety of the said moiety, for the use and behoof of Edmund Perkins, Esq. of Winckton, in the Parish of Christchurch, in the said County of Southampton; and the other moiety of the said moiety, for the use and behoof of John Willis, gent. of Ringwood aforesaid, and their heirs for ever.

By lease and release, bearing date the 18th and 19th of November, 1736, between James Perkins, son and heir of the said Edmund Perkins, of Winckton aforesaid, and James Willis, son and heir of said John Willis, of Ringwood aforesaid, on the one part; and Richard Franklin, of Fareham, in the County of Southampton, on the other part; the said James Perkins and James Willis did grant, bargain, and sell unto the said Richard Franklin, his heirs and assigns, subject to a quit rent of 5s. per annum, payable to the said James Perkins and James Willis,

“ All those five acres of ooze or muddy land by estimation, be it more or less, overflown, or subject
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to be overflown with the sea water, situate, lying, and being between Hoeford-bridge and the Tide-mill of Fareham, in the said County of Southampton, together with all ways, paths, passages, easements, waters, watercourses, profits, commodities, and appurtenances whatsoever, thereunto belonging, or in any wise appertaining; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof."

The said Richard Franklin, being thus legally possessed of the said *five* acres of mudland, did, by lease and release, dated the 5th and 6th April, 1737, grant, bargain, sell off, and confirm unto John Gringo, in the said County of Southampton, Esq. his heirs and assigns, subject to a quit rent of 2s. per annum, payable to the abovesaid James Perkins and James Willis,

" All those two acres of land, more or less, overflown, or subject to be overflown with the sea, being part of the *five* acres before-mentioned, situate, lying, and being between Hoeford-bridge and Fareham Tide-mill; that is to say, situate and being before the dwelling-house, yard, and storehouse of the said John Gringo, and *bounded with Fareham Key on the west*, the navigable river or channel leading from Fareham to Portsmouth on the north, the said dwelling-house and premises of the said John Gringo on the south, and at high water mark with the land of William Rickman, Esq. on the east, *as the same was then staked and marked out* ;

out; together with all ways, paths, passages, easements, waters, watercourses, profits, commodities, and appurtenances whatsoever, thereunto belonging, or in any wise appertaining; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, use, trust, possession, property, claim, and demand whatsoever, of him the said Richard Franklin, of, in, or to the same, or any part or parcel thereof, by virtue of the before mentioned grant of the said Perkins and Willis; or by virtue of a grant made to the said Richard Franklin by Richard Chaundeler, Esq. Lord of the Manor of Cams, of all manerial right or title whatsoever, of, in, to, or over the same."

By a further covenant in the last mentioned deed of conveyance from the said Richard Franklin to the said John Gringo, it is provided, " That if the said John Gringo or his heirs shall at any time make or convert the said premises into a saltern or saltwork, that then and from thenceforth these presents, and every grant, article, clause, word, and thing herein contained, shall cease, determine, and be utterly void and of none effect."

The said John Gringo, by his last will and testament, dated 31 May, 1773, devises as follows, viz.

" *Item.*---I give and devise unto Sir William Benett, and to Peter Barfoot, Esq. their heirs, executors, and
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administrators, as tenants in common, and not as joint tenants, the dwelling-house now in my possession, and the outhouses, quay, yards, gardens, orchards, fix tenements, and other buildings and appurtenances thereunto belonging, standing on a close of land and yard land, with its appurtenances, called or known by the name of Gringo's Quay, Yard, and Close, and adjoining to Fareham quay, and lying within the said Parish of Fareham, bounded with the buildings late of William Rickman, Esq. deceased, on the south-east, and the *road* leading from Fareham to Gosport, on the north-west, and *two acres of mudland purchased of Richard Franklin, on the north-east*; and *all those two acres of land*, more or less, overflown or subject to be overflown with the sea, being part of *five acres of ooze* or mudland, by estimation, be it more or less, lying and being between Hoeford-bridge and Fareham Tide-mill, which I purchased of Richard Franklin; and all the rest, residue, and remainder of my freehold, copyhold, and real estates whatsoever and wherefoever."

The following is a copy of the affidavit of Thomas King, formerly a clerk to Mr. Gringo, who living remote from the spot, his depositions were sent to Mr. Blachford, with the foregoing extracts:

IN CHANCERY.

Thomas King, of Fawley, in the County of Southampton, Schoolmaster, maketh oath and faith, That
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upwards of thirty years ago he was clerk to John Gringo, late of Fareham, in the said County of Southampton, Esq. deceased; and that the said John Gringo did, at that time, carry on a very extensive trade as a merchant; and that he was then in possession, in his own right, of a large and convenient quay and wharf, calculated for carrying on such trade, and for shipping and unshipping goods; and that ships of large burthen used to come to the said quay, and unship their goods there. And this deponent further saith, that no ships ever in his time landed any goods on the road or highway near the said quay, there being no convenience for their doing it, on account of the shallowness of the works and narrowness of the road, which, in the widest part, did not exceed twenty-two feet; and in the narrowest, not above sixteen feet, (save and except a few market boats.) And that he can the better speak to this fact, having lived with Mr. Gringo near twenty years. And that he well remembers the bound stones placed next the road, at the outside of Mr. Gringo's wall and quay; and they were so put as marks to distinguish his estate. And that one of them was broken, which Mr. Gringo immediately replaced.

THOMAS KING.

Sworn at, &c.

In addition to the above, Sir William Benett wrote the arbitrator, that he had been witness to the exercise of acts of ownership by Mr. Gringo, in his life-time; and that he himself, by the direction of Mr. Gringo, several years before his death, had forbid a person of
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the name of Pye, from digging mud out of any part of these premises; and that Pye left off in consequence of such forbiddance, and never trespassed in this way again. This circumstance happened about nineteen years ago.

Mr. Barfoot, as we have already observed, did not attend the arbitration himself; nor had he any communication or personal interview with the arbitrator: As a principal in the cause, and a person interested, he did not think it *decent* to watch the motions of a man, who had undertaken to do JUSTICE to the INJURED party.

Mr. Bargus, on the contrary, was the most conspicuous character at the meeting; the success of the cause appeared to be the object nearest his heart----he attended the very *minutiae* of the business---he attached himself, for what reason I know not, close to the side of the arbitrator---and never left it---no-- not till he had *securely lodged him* UNDER HIS OWN ROOF!

And now, while Mr. Bargus and the arbitrator *lay their heads together*, suppose we also take a view of the facts before us? There surely can be nothing *more improper* in our doing it, than in the example those gentlemen have set us; particularly if we are

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scrupulous to sum up the evidence with justice and candour towards the parties concerned.

On the part of the claimant Mr. Barfoot, it has been proved, and is admitted by the opposing party, that the title to Quay-close *is out of dispute*. So much of the embankment therefore, as extends from the Bishop's sluice *southward*, is clearly a trespass upon *that* estate, and is of the greater magnitude, because it covers or curtails near eight feet of the front of the claimant's quay. It therefore operates as a *two-fold* injury; first, by taking away the claimant's land; and, secondly, by depriving his quay of its accustomed emoluments.

With respect to the *right* to Fareham quay, and to the mudland before it, we shall do well to distinguish the several points upon which it turns. In the first place, the trustees claim a power to widen the quay as a public road, by the authorities granted in the turnpike act, and under a supposition that the adjoining land was the Bishop's waste. Secondly, the Bishop of Winchester claims a right both to the quay and to the mudland, as Lord of the manor. And thirdly, the inhabitants of Fareham claim a right to the quay, partly as tenants of the Bishop, and partly from immemorial custom. Let us first see how far these claims appear well or ill founded, and then compare them with the title deeds and oral evidence, adduced in favour of Mr. Barfoot.

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The trustees, in repairing the turnpike road, evidently considered Fareham quay as nothing more than the public highway. It was "dangerously narrow," and they determined to widen it; and precipitately laid this mudland to the road, without giving themselves the trouble of enquiring into the tenure. But because Mr. Mant, the Bishop's woodward, was willing to co-operate with them, they concluded it to be the Bishop's WASTE. And as the act invests them with a power of taking in the waste of commons, without applying for the owner's consent, they supposed themselves justified in doing the same here. But when the proprietor came to inform them it was *private property*, they discover their mistake----they confess they had done wrong, and propose terms of compensation!---The *authority* under which they acted, was given up---the *impropriety* of their proceeding was openly acknowledged; and, whatever might be the pretensions of a *third* person, THEY were destitute of even a shadow of excuse for their conduct (*b*).

How comes it then, that this compensation was not punctually made, and the dispute honourably terminated? Why, Mr. Bargus *had afterwards heard*, that

(*b*) Vide p. 13, 14, 15, 19, 20, 21, &c. See also the turnpike act, which directs, that the trustees shall first apply to the owner or proprietor of such land as may be required to complete the purposes of the said act; and in case of his *refusal* to dispose of the same, that then they shall be empowered to take it, under the valuation of a jury,---but not otherwise.

the property belonged to the Bishop of Winchester, or to the Corporation of Portsmouth; and under *this vague pretence*, the absolute determination of the trustees at a former meeting was rescinded, on purpose to evade the performance of their promise! Their subsequent proceedings were by no means directed to an accommodation, nor do they bear the least symptom of a disposition to redress the injury. On the contrary, they exhibit a series of the most artful and disingenuous subterfuges, until Mr. Bedford had succeeded in *persuading* the Bishop of Winchester he had a *title* to the spot, and had actually obtained the loan of it,---to justify a breach of the act of parliament, and to protect the trustees against the complaints of an injured individual! A circumstance, which, if suffered to become a precedent, would leave no man's inheritance secure; since the guardians of any public road, under similar pretences, might take by force the property of every person upon which it borders, and pretend that the Lord of the Manor, and a hundred others, had a claim to the same property, and that he must maintain actions against them all, or give up his estate!---This is the plain inference deducible from such a doctrine; and I am sure I need not point out how repugnant it is to the intentions of the legislature, nor how unwarrantable the conduct of any set of men, who resort to it.

The Bishop's right to the quay, is grounded on a supposition, that a mill formerly stood upon it, and
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that his tenant used it to ship off his flour. Not to say how improbable this conjecture is, and how deficient on the score of evidence, we need only remark, that a right to the quay, would by no means establish a right to the soil. The property of Fareham quay, separately considered, is of very little importance; the right to the soil is the real subject of enquiry, and the only point in litigation. The Bishop sets up no other claim to the soil, than that of *Lord of the Manor*; and his witnesses have gone no further in supporting that claim, than merely to say, “*They understood it to be the Bishop’s waste,*” without producing a *single* PROOF of the fact. The Bishop’s steward was present---the court rolls, the registers, and all the requisites for ascertaining the *limits* of the Bishop’s manor were upon the spot, and yet no attempt is made to *prove* that this soil was *absolutely* and *bona fide* within the Bishop’s manorial jurisdiction! Not a word appears either in the presentments produced by Mr. Serle, or in the leases and grants so long dwelt upon, that has the smallest tendency to establish a right to the soil, or that relates to any thing more than the mills and wharfs at Wallington and Lady-bridge, and to the marsh and cottage on the western side of Fareham quay. The King’s highway always separated the Bishop’s land from the premises now in dispute, and the owners of them pay no fines, no quit-rents, nor perform services of any description to the Bishop of Winchester. We are therefore to conclude, as well from the opposing evidence, as from all these corroborating

circumstances, that whatever might have been the Bishop's property in the year 1410, or prior to the restraining act of Queen Elizabeth, he does not appear to have established any right whatever to the *soil*, either as Lord of the Manor, or by means of any other custom or title. Besides, if we call in the aid of the Bishop's lease to Reynolds, stated in the foregoing pages, we shall discover, that the claim of the Bishop's tenants to a quay or wharf, relates only to such as *belong to the mills* situate at Wallington; and because the Bishop's tenants have from time to time repaired the bridge or sluice at this spot, they have confounded the wharf at Wallington, with Fareham quay. The foregoing statement declares, that no such grant as Fareham quay is mentioned in any lease the Bishops of Winchester had ever granted; and which, had they any right to grant, could not have been omitted; and in proof of this, no lease whatever has been produced in evidence, that mentions such a place as Fareham quay.---Upon presumption so weak, and upon evidence so unfounded, 'tis impossible to say, without shameful partiality, that the Bishop of Winchester has established any claim to the spot in question.

The title set up by the inhabitants of Fareham, so far as it rests upon the Bishop's claim, is already done away; for if the Bishop can prove no right in himself, he can delegate none to those who hold under him. With regard to the establishment of a free quay from immemorial custom, we must consider the requisites
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necessary to form it. If the town of Fareham ever possessed such a right to the spot in question, it follows of course that it must also have been *their right to keep it in repair* ;---for no corporate body will pretend to hold an exclusive right to premises of any description, and look up to private individuals to keep them in repair. The idea at once militates against truth and reason ; and there has been sufficient evidence given to prove, that this quay has always been repaired at the joint expence of the Bishop of Winchester, the owner of the Bishop's marsh and cottage, the Lord of the Manor of Cams, and the Parish of Fareham, *as the King's HIGHWAY within that parish* ; and *not* as a PUBLIC QUAY. Whenever it was presented for being out of repair, it was always termed "the King's highway ;" a circumstance which at once destroys every pretence for calling it a quay. And since it has been made a turnpike road, it has been constantly under the controul of trustees, appointed by the Gosport act, which, if it had been an established public quay, never could have happened. The three branches of the legislature combined, have not a power to disfranchise a custom of this kind, had it really existed ; and yet the clerk of the turnpike road *directs* what articles *may be* laid upon this quay, and what *may not* ; which at once proves that the quay, (if we may still call it so) belongs to the trustees of the road, and not to the inhabitants of the town of Fareham. Mr. Bedford himself gave this fact in evidence before the arbitrator, in his zeal to convince that gentleman that Mr. Barfoot's

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 (i).”---What!---shall the humble
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 highway, but denied the existence of
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 a quay, because it never was a quay,
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turn our attention to that kind of
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ord's own statement of this fact, in page 116.
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acts of ownership, and by peaceable long series of years, hath always continued to be, the first care of the possessor to protect.

The prior object of this investigation is to determine, Whether the spot of land now laid to the road and quay, is actually described in the deeds. The writings which were drawn upwards of a century ago, *that* estate to be *then* bounded by the road leading from Fareham to Gosport; which convey the two acres of mud-land from Gringo, in the year 1737, described as bounded by Fareham quay, *as it then was*, therefore strike the most unlettered man, that the *same road and quay* have, subsequent to the above writings, been widened upon that land, which were *then* the boundary, that every inference must of necessity have been made from those estates, and that the land is conformable to the description of the deeds, and that it belongs to the possessor, as any part of his property.

But then, it is contended, that title, without concurrent acts of ownership, is not sufficient to justify a litigated claim. To overcome this objection, or at least to substantiate the claim, requires, we must advert to the facts.

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in evidence. Stone, who is the oldest witness, who knew the spot from his childhood, and who, from his servitude with his father under Mr. Gringo, was well acquainted with the premises, positively declares that Mr. Gringo constantly received wharfage for goods placed upon the shores of Quay-close, as far as the Bishop's sluice; and that he caused a moat or channel to be dug all across this mud-land in the front of his wharf and quay, for the purpose of bringing up and mooring his ships and vessels. Mr. Page also proves the payment of wharfage for hoops laid upon the same spot; and Hayden, though a terrified and unwilling evidence, proves this part of the mud-land to have been under the absolute controul of Mr. Gringo. Both Hayden and Stoodly, in their written declarations, prove the right of digging mud and gravel here, to have been exercised *only* by Mr. Gringo, and that in the fullest and most extensive degree; which is confirmed and corroborated by the books of account, and by the testimony of Sir William Benett, and Thomas King.

The evidence likewise of the opposing witnesses, if fairly considered, affords many instances of acts of ownership in the person of Mr. Gringo. Green, Parsons the gardener, and Sherwin all agree, that Mr. Gringo altered and enlarged his wharf and quay upon this land, and exercised other privileges upon it, without the let or hindrance of any person whatsoever. Cleuer unites in the same story, and adds fur-

further, That Mr. Gringo took down that end of Fareham quay adjoining to Quay-cloſe, and ſtopped up the road by which teams had uſually gone in upon the mud. This is confeſſedly an act of ownerſhip of the firſt magnitude; and all the difference we find between the depositions of theſe witneſſes, and thoſe in behalf of Mr. Barfoot, is, that the latter *prove* the land to have been *the property of Mr. Gringo*, while the former *inſiſt*, that it is *waste land belonging to the Biſhop of Wincheſter*. When theſe people are asked, “How they *know* this land to be the Biſhop’s waſte?” they answer, “Because *they* have always *underſtood* ſo”—without being able to give the ſmalleſt *proof* of the fact. To dwell longer on the ſubject, would therefore be ridiculous; more eſpecially when we reflect, that from the nature and ſituation of land ſubject to be overflowed by the ſea at every tide, no further nor greater acts of ownerſhip could, in the nature of things, be exerciſed upon it.

Another objection ſet up againſt this title, is, That the two acres of mud-land are claimed *in the wrong place*, and that they *muſt be* ſituated nearer Hoeford-bridge. A ſlight inveſtigation will prove the idea perfectly abſurd; for had the writings been *leſs* expreſſive in the detail, and left the *locus in quo* in any kind of obſcurity, we can hardly ſuppoſe the ſeller and purchaſer of an eſtate, and the attorney by whom it was conveyed, ſhould all *three* be ſo ignorant of the real ſituation of the premises, as actually to convey
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another man's property, in lieu of them ! If we regard the honor of the profession, or the understanding of mankind, we shall scout the insinuation ; for a precedent of the kind, I will venture to affirm, cannot be selected from among the mistakes of men, in the most abject state of nature.

If we inspect the deeds, we shall find them free from obscurity, and worded in the most rational and intelligible terms. The land was *staked and marked out*, to ascertain which part of *the five acres* of oozy or muddy land was to be conveyed to Mr. Gringo. The *old* description of the five acres is first preserved, to prove their analogy to the Letters Patent ; and the description of the two acres intended to be sold off, follows ; in order to shew, that they were situate "*before the dwelling-house and storehouses* of the said John Gringo." The circumstance of their lying before his wharf and storehouses, induced him to make the purchase ; for had they been *remote* from these premises, they could not have afforded him the least advantage. Besides, this *secondary* or *additional* description was absolutely necessary on the part of Mr. Franklin, to ascertain to his posterity what part of the five acres *was reserved to his own use* ; and for this reason, in addition to that before given, the *two acres*, purchased by Mr. Gringo, "*were then marked and staked out*," a precaution that excludes the possibility of *mistake* in ascertaining the premises. The land is described to lie between Hoeford-bridge and Fareham tide;

tide-mill. It precisely corresponds with this delineation; for it is nearly in the *centre* of those two points; and there is no other spot, within the whole extent, where *five acres* of mud-land can be found together; a consideration, which is alone sufficient to establish the correctness of the title deeds. Add to this, that a quit-rent has been constantly paid for this spot, to Mess. Perkins and Willis, assignees of the King's Letters Patent, the receipts for which were proved by Mr. Godden, and constitute very important evidence. So that upon **the whole**, there cannot remain a doubt, but that **the deeds**, taken from the Grant of the Letters Patent, to the date of Mr. Gringo's Will, comprise a regularly deduced and indefeasible title, which no evidence opposed to it by the united efforts of the Bishop, the Trustees, and the Town of Fareham, hath yet been able to invalidate.

The depositions of Mant and Corte, do not in the least affect the title. Mr. Mant tells us "*he thought*," and "*still believes*," that the land was part of the Bishop's waste; but he gives no other reason for this *belief*, than that Mr. Bargus had told him it was the Bishop's right to repair the quay. As to the positive matter of fact, he leaves us totally in the dark.

Mr. Corte does not pretend to speak to the property; but like those who do good by accident, he comes forward to corroborate the evidence of Porter and Parsons, and to confirm *their* statement of the damages

images and annual loss sustained by Mr. Barfoot in consequence of the encroachment ! The Rev. Dr. Griffin is also confirmed in his evidence, by the official letter of Mr. Bedford, page 18 ; which added together, not only exposes the unhandsome conduct of the Trustees, but evinces their disposition to widen the breach, in the self-same moment that they acknowledge their error, and propose restitution !

Under all these circumstances, with the facts as they now stand, and with dispositions guided by Conscience and Truth, what would the minds of an English Jury suggest ? Would they not consider themselves *bound* to shape their Verdict by the *evidence* before them ?—to *protect* the injured and oppressed party ?—to provide a *fair* and *ample* compensation for the injury ? and such as should punish the unwarrantable proceedings of men, who had drawn upon them the bitter curse of *removing their neighbour's landmark*, and by whose obstinacy and implacable resentment all the subsequent evils were occasioned ? If such sentiments would on similar occasions have directed the verdict of an honest jury, let us examine how *nearly* the Arbitrator has framed his Award to correspond with the same principles !

T H E A W A R D.

“ KNOW ALL MEN to whom these presents shall come, That I, the sole arbitrator appointed by virtue of the rule of court annexed, whose name is
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hereunto subscribed, and seal affixed, taking upon me the trouble of the said award, and having fully examined and duly considered the proofs and allegations of both the parties mentioned in the above rule of court, do make and publish this my award between the said parties, in the manner following, that is to say, First; I am opinion that the defendant Peter Barfoot *has not any title to the spot on which the quay in the indictment mentioned, or any part thereof, has been erected*; in consequence of such, *in my opinion*, the said Peter Barfoot, under the order of the said rule of court, is bounden to repair such damage *as has been done to the quay*, at his expence. And I do further award, That the said repairs be done and completed on or before the twenty-second day of August, which shall happen in the year of our Lord 1787. And I do further award, That all costs and charges which has arisen, or may arise, in consequence of the action brought by the said Peter Barfoot against Richard Bargus and others, or in consequence of any other proceedings at law between the said parties, shall be paid *by each of them*; that is to say, *each shall pay and bear his or their costs and charges*. In witness whereof I hereunto set my hand and seal, this SIXTEENTH day of October, in the year of our Lord 1786.

ROBT. P. BLACHFORD."

Signed and sealed, the day and
year above mentioned, in the
presence of

L. BIGG.

This

This Award was inclosed to Mr. Barfoot's attorney,
in the following curious Epistle :

S I R,

"INCLOSED you will receive my Award made in the cause of Barfoot against Bargus and others. I should have sent it sooner, had I not taken time to *consult Council*, to satisfy myself on some *doubts* which arose in my mind;

"The first point was, "Whether an arbitrator *ought* to confine his enquiries as *to evidence*, or to make his award on strictly *legal rules*."

"The second point was, "Whether it would be adviseable to introduce *the reasons* on which an arbitrator *founded his opinion*, into the body of the award itself."

"To the first question it was answered, "That an arbitrator *was not confined* to the rules of *strictly legal evidence*; and may *act* and make his award on *equitable* as well as *legal* principles."

"To the second question it was answered, that it would be more adviseable to make the award *generally*, and not to introduce *any reasons* into the award itself."

"In the conclusion of a business of this nature, it will be *a satisfaction to myself* to inform the parties concerned, of a principal reason on which I founded
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my judgment, and I shall add it in this letter. It appears by Letters Patent under the seal of the Exchequer, in the first year of the reign of King Charles, that a commission was granted to Sir Thomas Fanshaw and others, to survey and examine into the situation of the lands overflowed, or subject to be overflowed by the sea, on the coast of the County of Southampton, from Langston eastward, to Lymington westward; and whether the recovery of them from the sea would be any damage or injury to any person or persons whatsoever. It further appears by the said Letters Patent, that in consequence of the said commission, an inquisition was taken at the Town-hall in Winchester, in the second year of the reign of King Charles, concerning the lands overflowed or subject to be overflowed by the sea, in which, among other things, it is stated, That the recovery of the said lands from the sea, *will not be any damage or injury to any person or persons whatsoever.* This inquisition was made on the oaths of *thirteen persons* therein named.

“ It further appears by the said Letters Patent, that in the fourth year of the reign of King Charles, a grant was made of certain lands overflowed by the sea therein described, *to Mary Wandesford and William Wandesford, and their heirs.* In the above grant, the mudlands NEAR Fareham are described; and I am of opinion, that the land on which the highway was widened by the Commissioners of the Turnpike Road, leading through Fareham, IS NOT included in the description of the lands conveyed by the said grant; as will more fully appear, reference being had thereunto. However, if any

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doubts should arise on a supposed *uncertainty* in the said description, it may be proper to call in *the aid* of the words of, and the *reasoning* that *will arise from*, the *preamble to the said Letters Patent*, together with some *corroborating evidence*. The preamble states, "that on an inquisition made and returned on the oaths of *thirteen persons*, that the recovery from the sea of lands described in the grant, will not be any damage or injury to any person or persons whatsoever." It appears from records preserved in the Court Baron of the Manor of Fareham, belonging to the Bishop of Winchester, "That a key had been kept up, and a landing-place used
ON THE SPOT OF LAND IN QUESTION,
prior to the date of the Letters Patent of King Charles before-mentioned, and that the same *has been kept up since that time, by the Bishop of Winchester, or his tenants*. If the grant made to Mary and William Wandesford (the object of which was the embanking and recovering from the sea lands overflowed, or subject to be overflowed by the tide) included the spot in question, the grantees would have had it in their power to have taken away *the benefits* arising to such as had *a right* to use the *key or landing-place* above-mentioned; and such an exercise of the right of the grantees, or those claiming under them, would have operated *in express contradiction to the words and meaning of the inquisition recited in the above-mentioned Letters Patent*, and on which the grant itself is founded. Under all these circumstances, I am satisfied in my own mind, that the land in question is not included in the grant; and as Mr. Barfoot derives
his

his title to his estate *adjoining* to the land in question from Mary and William Wandesford (or one of them) the first grantees, I scarcely need add, *that he appears to have no title to the ground on which the highway was widened (1).*

“ I shall trouble you, if you think proper, to communicate to your client the contents of this letter; and I trust that every person interested in my decision, when he may canvass my award, will consider how unpleasant must be the office of a sole Arbitrator, and that he will *place himself in my situation!*

I remain, Sir,

Your obedient humble Servant,

RT. P. BLACHFORD.”

OSBORNE, *Isle of Wight*,

O^r. 16, 1786.

To Mr. Godden, Attorney at Law,
Portsmouth Common.

IT

(1) When Mr. Blachford made his award, Quay-close appears to have been out of his memory. The right of that estate to *low water mark*, is indisputable; as has already been, and will hereafter be further shewn. It was apparent to Mr. Blachford, upon view of the premises, that the encroachment came close up to, and covered eight feet of the front of the wharf, which stands upon Quay-close. He was likewise shewn the *boundary posts and*

It must be remarked, that the foregoing award, by some strange neglect, was not made upon stamped paper; and it was also deficient in that exact form of words, which law and custom seem to prescribe. Mr. Bedford, of course, when he discovered the defect, and found it *fatal* to *this* decision, lost no time in getting it removed. For this purpose he wisely adopted the example of his worthy employer. He procured himself the honour of a *visit* from the Arbitrator. He conducted him to his private office; and after pointing out the defective parts of the *first* award, prevailed with him to make a *second*!

If blame can possibly fall upon the Arbitrator in this affair,---which far be it from me to affirm--- it is for calling upon Mr. Barfoot's attorney, to inform him *personally*, of the *mode* and *manner*, in which he had *made* a *second* award!---and for desiring *him* to go to Mr. Bedford's house, *to fetch it*!!---To commit an act so highly improper, and to become the messenger of it, betrays an arrogance of opinion---which

piles that run into the sea; and when the title deeds of this estate, with its appurtenances, came before the Arbitrator in evidence, Mr. Bedford rose, and admitted that estate *to be out of dispute*!--- How then can Mr. Blachford say, that Mr. Barfoot derives his title from Mary and William Wandesford *only*, when it is apparent that he claims a title under Penford and others; and that the encroachment stands upon part of both the estates? See p. 88 and 89, and the extract from Penford's deed, p. 119.

sup-

supposes none but ourselves to have the gift of discernment (*m*). Mr. Godden felt its force, and with becoming spirit reprobated the transaction; and took occasion to remark, That as he had already been served with *one* award, he should certainly not go to the attorney *concerned against him*, to procure another.

Mr. Bedford's object had previously been, to cancel the *first* award, and to get the *second* executed in a form, that would effectually secure the Trustees. Perseverance seldom misses of its aim. He succeeded to his heart's desire; and finding Mr. Godden averse to call for the award, he very obligingly inclosed it to him, as follows.

"Messrs. Bedford and Hancock present their compliments to Mr. Godden, and (as requested by Mr. Blachford) left with him copy of award in the business between Mr. Barfoot and Mr. Bargus."

PORTSMOUTH COMMON, 4 Nov. 1786.

THE SECOND AWARD.

"KNOW ALL MEN to whom these presents shall come, That I, the sole arbitrator appointed by virtue of the rule of court annexed, whose name is hereunto subscribed, and seal affixed, taking upon me

(*m*) If an Arbitrator shall suffer the *attorney* of *one* party only to *draw up* the award, without the concurrence of the other, the same shall be deemed *illegal*, and shall be set aside for partiality and unfairness. *Mich. 1705, Burton and Knight, 2. Vern. 514.*

the trouble of the said award, and having fully examined and duly considered the proofs and allegations of both the parties mentioned in the above rule of court, do make and publish this my award between the said parties, in the manner following, that is to say, First; I am of opinion, *and do award*, that the defendant Peter Barfoot has not any title to the spot on which the quay in the indictment mentioned, or any part thereof, has been erected; in consequence of such, in my opinion, the said Peter Barfoot, under the order of the said rule of court, is bounden to repair such damage as has been done to the quay, at his expence. And I do further award, That the said repairs be done and completed on or before the twenty-second day of August, which shall happen in the year of our Lord 1787. And I do further award, That all costs and charges which has arisen, or may arise, in consequence of the action brought by the said Peter Barfoot against Richard Bargas and others, or in consequence of any other proceedings at law between the said parties, shall be paid by each of them; that is to say, each shall pay and bear his or their costs and charges. In witness whereof I *have* hereunto set my hand and seal, this THIRTEENTH day of October, in the year of our Lord 1786.

ROBT. P. BLACHFORD."

Signed and sealed, the day and year
above mentioned, in the presence of

R. HALL (n).

(n) Clerk to Mr. BEDFORD.—The words printed in *Italics* in the above award, were omitted in the first, which was an original copy, under *hand and seal*.

It

It is curious to observe, that though *both* the foregoing awards were the production of *superior* talents, and the result of great leisure and precaution; yet, when Mr. Barfoot came to stir in the business, he discovered that neither of them was the *real* award! nor has there been, to the present moment, a copy of it delivered to him. The real award, filed in the Crown Office, bears date on the THIRTIETH of October, 1786; and not on the *thirteenth* nor *sixteenth*, which are the dates of the two awards delivered to Mr. Barfoot's attorney. And it is no less remarkable than true, that the *first* award is dated on the *sixteenth* of October, and the *second* on the *thirteenth* of the same month, three days *antecedent* to the *first*. But, we cannot so much wonder at these inconsistencies, when, upon a bare inspection of the laws which govern this mode of decision, we find, that Mr. Blachford, in scarcely any one instance, has conformed to those rules, which ought to direct the conduct of every person, who takes upon him the office of an Arbitrator.—The following extracts will justify the remark.

Arbitrators shall make their award according to the express condition of the Rule and Submission under which they act.—1 Nels. Abr. 234. Dyer, 356. 1 Danv. Abr. 515.

The Submission, in the present case, was, "Of all matters in dispute between the Trustees of the Gosport

Turnpike Road, and Peter Barfoot, Esq."---And the Rule of Court, was, " That if the said Peter Barfoot should produce a title to the land which the Trustees had taken, for the purpose of widening the road, that then, an adequate compensation should be made the said P. Barfoot for the same (o)." The Arbitrator, however, dispenses with *this* obligation; and instead of admitting the title proved by Mr. Barfoot, agreeable to the said Rule of Court, awards the property to the Bishop of Winchester, though no party to, nor included in, the Submission.

If an Arbitrator be chosen to make an award upon one thing, and he makes it upon another, the arbitrament is void. Bacon's Compl. Arb. 3 edit. p. 84.

The Arbitrator was directed by the Rule of Court, to decide between Mr. Barfoot and the Trustees. His award is, between Mr. Barfoot and the Bishop of Winchester. See Mr. Blackford's reasons, p. 145, &c.

If it appears that an Arbitrator went upon a plain mistake, either as to law, or matter of fact; the same is an error in the body of the award, and sufficient to set it aside. 2 Vern. 705. Bacon's Compl. Arb. 195.

The Arbitrator has confessedly made his award upon a *supposition* that the soil is part of the Bishop of

(o) See the Rule of Reference, page 77.

Winchester's waste, and within the jurisdiction of the Court Baron of Fareham. The *fact* is, that the soil does not come within the description of waste, nor is it within the manor of Fareham.

If an Arbitrator shall hold any private conference with, or meeting at, the house of one of the parties, and exclude the other; or PARTIALLY conduct the enquiry; or suffer the award to be drawn up by the attorney of one party, without the presence of the other, such award shall be deemed nugatory, and of none effect. 4 Rep. 82. Vern. 514. Brownl. 311.

The Arbitrator was *entertained* by, and *lodged* at the house of the prosecutor Bargus, and had a *meeting* there of several of *his* witnesses. In taking the evidence, he suffered the prosecutor several times to *interfere*, though the other party *was not present*. He received the evidence of persons notoriously interested in the decision, though apprised of the same at the time of taking it down. He received a plan of the land in dispute, from the hands of Mr. Bedford, *totally unauthenticated*; and he apparently suffered his judgment to be directed by it, in *preference* to a plan *more accurately drawn*, and *attested upon oath*, by two of Mr. Barfoot's witnesses. He employed the prosecutor's attorney to draw up the award, without the concurrence of the opposite party !

If an Arbitrator make an award upon one day, he cannot make an award, between the same parties, upon any

any other day, although within the time allowed by the Submission. He may agree upon a thing one day, and another thing upon another day, and at last make his award of the whole; but when once made, it shall be final.---26 Hen. 6. 52. 39 Hen. 6. 12. 47 Ed. 3. 21. 2 Mod. Entr. Eng. 262. Jenk. cent. 3 Case 61. Co. 77.

In the present case, the Arbitrator, under one and the same Submission, made *three* awards, of *three* different and distinct *dates*; namely, on the 13th, 16th, and 30th of October. Copies of *two* we have already given; and the *third* may at any time be seen, upon application, during the hours of business, at the Crown Office, in the Temple.

An Arbitrator is bound to make his award secundum allegata & probata. 4 Rep. 82. Brownl. 311.

In the present case, the Arbitrator has preferred *speculative reasoning*, to *positive evidence*; and has, in consequence, founded his award upon a manifest error, both in *law* and *fact*.

To illustrate this, we want no better proof than the Arbitrator's own letter annexed to his award. Upon the *spirit* and *principle* of the reasoning therein contained, he *confesses* to have founded his opinion, and promises himself much *satisfaction*, from the *reputation* it will afford him. Let us see how far his doctrine

trine will stand the test of that *canvass* he expects it to bear. We will state it fairly, and consider it with candour.

The Arbitrator informs us, That the *preamble* to the Letters Patent, by which the mudlands were granted to Mary and William Wandesford, and under whom Mr. Barfoot derives his title, states, That the lands thereby granted, were such only, *as would be no damage or injury to any person or persons whatsoever.* That it appears, from records preserved in the Court Baron of the manor of Fareham, *belonging to the Bishop of Winchester,* That a key had been kept up, and a *landing-place* used, ON THE SPOT OF LAND IN QUESTION, *prior* to the *date* of the Letters Patent; and that the *same* had been kept up *since* that time, *by the Bishop of Winchester, or his tenants.* That if the grant to Mary and William Wandesford, and their heirs, *included the spot in question,* they would have had it in their power to have taken away the *benefits* arising to *such* as had a *right* to use this *key* and *landing-place.* He therefore CONCEIVES, the spot in question *is not included in the Letters Patent,* because it would operate in express contradiction to the words and meaning of the *preamble* therein stated. Under these circumstances, the Arbitrator declares himself satisfied in his own mind, “*That the defendant Peter Barfoot has not any title to the spot on which the quay in the indictment mentioned, or any part thereof, has been erected.*” Thus the substantial evidence adduced in support of a well founded claim, gives way to a mere

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partial conceit, upon which the Arbitrator confesses to have grounded (*p*) his award !---I do not despair of making him ashamed of it.

That the *preamble* to this, as well as to every other grant from the crown, must of necessity contain a specific condition, that its operation shall not invade the rights and properties of other individuals, is a blessing of too important a consideration, for any subject under this government to dispute. But, that a *key* had been kept up, and a *landing-place* used, *on the spot of land in question*, I positively *deny*---and as absolutely *affirm*, that *no key*, or *landing-place*, was ever kept up upon *this spot of land*, until it was erected by the joint contrivance of Bargus and Mant. I take Mr. Mant's own evidence for the fact, and challenge refutation !

It will hence be obvious, that Mr. Blachford has confounded the right to the *soil*, with the right to the *landing-place* ; and that he has made no distinction between Fareham quay in its *present*, and in its *former* state ; although *that distinction* is the very hinge upon which the Arbitration turns ; for had Fareham quay been continued in its former state, no property had been invaded, nor any injury complained of. But this *key is now* brought out, and erected upon a spot of

(*p*) If any one doubts the *correctness* of this statement, he is requested to refer to the foregoing copies of the award, and to Mr. Blachford's letter, p. 145, &c.

land,

land, which, for ought we know to the contrary, has been overflowed, or subject to be overflowed by the sea, ever since the days of Adam; and yet Mr. Blachford roundly asserts, that upon *this very spot*, a key and landing-place had been kept up by the Bishop of Winchester, or his tenants, *prior* to the date of the Letters Patent!

To reconcile this manifest contradiction, either in judgment or expression, we can only suppose the Arbitrator to mean, "That the key was kept up--- *not upon the land in dispute*, but upon *the King's highway*, prior to the date of the Letters Patent." Under this idea, there is rational ground of argument; and, to give it all the scope Mr. Blachford can desire, we will again admit, what we have stated in page 32, that this spot having been banked up to preserve and secure the road, was found a convenient *hard* for boats and wherries to take up and set down passengers and goods; and that a custom of this kind obtained, till it received the appellation of Fareham quay (*q*). But, to be told, That this embankment, or key, or landing-place, has been kept up under any other denomination than the King's highway, either by the Bishop of Winchester, or *his* tenants, or by any other authority, *before* or *since* the date of the Letters

(*q*) This fact, I believe, is stated by Mr. Bedford, precisely in the same way, in his instructions laid before Council for an opinion. See p. 31, 32, &c.

Patent; or that any exclusive *right* to such key or landing-place, or to any *benefits* arising from it, appears to be vested in the Bishop of Winchester, or in *his* tenants; or in any man or set of men whatsoever, by virtue of any record, deed, court-roll, or other instrument, preserved in the Court Baron of the manor of Fareham, is an assertion, which I beg leave to say, is *not founded in evidence!* No such records could ever be found; and I will venture to affirm, *there are no such in being.*---If there be, produce them.

Upon a presumption of having established this assertion, the Arbitrator proceeds to introduce the inference he has drawn from the *preamble* to the Letters patent; and by admitting that the Grant *includes* the lands NEAR Fareham, he would obliquely infer, that those AT Fareham, and consequently at this spot, *are not contained in the Grant.* This, I have no doubt, was intended as a compliment to Mr. Bedford, who *first* broached the idea, That the Inquisition extended no farther up the river than to Hoeford-bridge, about a mile *below* the town of Fareham. We have certainly no other guide to direct our judgment in this enquiry, than the Patent itself, which states, in the plainest language, *That the Inquisition included all lands overflowed, or subject to be overflowed by the sea, abutting upon Fareham river, quite up to Wallington-bridge (r);*

(r) Wallington bridge is above the town. See extract from the Letters Patent, p. 121.

and

and if so, then undoubtedly the lands at Fareham, and at this spot, are of necessity *included in*, and firmly *held under*, the Letters Patent. If they be not, name the covenant by which they are excluded.

I shall be told, perhaps, that this, in effect, is already done, by the conclusive part of the Arbitrator's argument; namely, "That if this spot were *included*, the Patent would operate in express contradiction to itself, by destroying the *right* of those who were *entitled* to a landing-place upon the side of the road." But I deny the position, and insist, That this right *has not been proved*; nor is it *possible to be maintained*. The utmost force the Arbitrator's words will bear, is, That a custom had obtained, prior to the date of the Patent, by which this spot became a public landing-place. If the question be put to the Arbitrator, I believe he will acknowledge, that this is all he contends for. I am content to meet him upon his own ground, and will admit the fact. I then insist, That it is incumbent upon him to shew, that this custom has been *sanctioned* by a GRANT FROM THE CROWN, *prior* to the date of *this* Patent, before the *legality* of his proposition can be established. A prescriptive right *here*, will avail nothing. The property of the *soil* of all rivers, which have the flux and reflux of the sea, belongs to the King. 1 *Syderfin*. 148. 9. A *prescriptive* right, no matter of how early a date, is not good when it runs against the King, for *nullum tempus occurrit Regi*. 2 *Roll*. 264. 40. The King
has

has the property *tam aquæ quam soli*, and all profits of the sea and navigable rivers. *Cales* 17. *Davis* 56, 57. The city of London enjoys the soil and property of the Thames by Grant from the Crown. The same authority which delegated the property of that soil to the citizens of London, delegated to Mary and William Wandesford, and their heirs for ever, the property of the soil now in dispute. And shall Mr Blachford presume to say, in opposition to this sacred Right, and in contradiction to the above authorities, that a *mere accidental usage* of landing passengers and goods upon the side of a road, shall deprive the King of exercising a power to *grant*, and the subject to *enjoy*, the contiguous soil, lest it should annihilate the custom? If this be his patriotism, I will take up his own system of reasoning against him, and contend, That he has decided in favour of a custom *without right*, and turned his back upon a claim, supported by the most *unequivocal* evidence (r)!

But

(r) As the Bishop of Winchester possesses an undoubted right to a wharf and quay at Fareham, it is not impossible but the Arbitrator might have been led to a misapplication of the records. The Bishop's mills, we have already shewn, are situated at Wollington, on the *other side* of Fareham, at the top of the river or channel. That precinct is certainly within the Bishop's manor, and *here* his Lordship has a commodious wharf and quay for the use of his tenants. That a right of wharfage at Fareham quay, and at this place, have been confounded with each other, does not admit of a doubt. The Bishop's *suice* under Fareham quay having been made for the purpose of watering his marsh, he always allowed an extra supply of timber to the tenant of his mills,

But here, I may possibly be threatened with that formidable instrument, *the Lease to Beeston in Queen Elizabeth's time* (t), which, it was pretended, laid the corner stone of the Bishop's quay, and superseded the Letters Patent of King Charles ! Mr. Bedford was loud and vehement in displaying its powers, but forgot to *prove* that it related to the spot. It rose upon us with all the terrors of a blazing star, but vanished like a meteor. Should it again appear in our hemisphere, its effect will be perfectly harmless.---Its force is spent,

mills, to keep it in repair. See lease to Reynolds, p. 109, &c.--- Upon this foundation alone, Mr. Bargus hath set up the Bishop's right to wharfage at Fareham quay ; for he supposed, that if the Bishop's tenants kept the sluice in repair, that they, in consequence, must have a right to the top of it for a wharf ; although the same gentleman has told us, that the top of it was filled in and paid for by the Trustees, and is constantly kept in repair by them ; a tacit acknowledgment that neither the Bishop, nor his tenants, have any thing to do with the surface. Nor can any man be absurd enough to suppose, that the Bishop's tenants would bring their corn and flour the full distance of a mile to be shipped off at Fareham quay, when they enjoy, under the Bishop, a much more commodious and convenient wharf adjoining to the mills, which has been immemorially used for that purpose. Let the leases of the Bishops of Winchester be inspected, for five hundred years back, and I will venture to affirm, that no wharfage is granted, nor a bare mention made of such a right, at the spot in question.--- I direct this professedly to the Bishop of Winchester's Steward, and publickly call upon him, if any such record exists, to state it to the world, that it may justify the conduct of a man, who has added *a new privilege* to the Diocese of Winchester, at the *expence* of an individual !

(t) This was produced in evidence by Mr. Bedford. See p. 117 ; and refuted by the Rev. Dr. Griffin, p. 118.

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and

and it proves *nothing*. In this opinion I have good reason to believe, the Arbitrator himself is with me, or he would never have given up so *decisive* an argument in support of his favorite hypothesis---the Bishop of Winchester's title to Fareham quay.

Let me now ask, How the Arbitrator reconciles a difference of Opinion with the thirteen gentlemen who were appointed to survey these lands, and who declared, upon oath, in the Guildhall at Winchester, that a recovery of them “*would be no injury or damage to any person or persons whatsoever?*” That Mr. Blachford has a high opinion of his own discernment, I will *now* no longer place to the credit of public report. He has made himself *debtor* for it, and I congratulate him upon the *honor* it will afford him. I think however, when he rescued the *right* to this landing-place from oblivion, and could not ascertain the person in whom it was *legally* vested, he might have found some better *object* of *charity* than the Bishop of Winchester, on whom to have bestowed the *benefits* arising from it.

It will possibly be urged, That the Arbitrator has not in *direct terms* opposed the opinion of those gentlemen; but that he only *conceives* they could not, at the time, have had this spot in view. I answer, That this is a distinction in argument, without a difference in fact; and a proposition that cannot be admitted, without an express contradiction in terms. If we take
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the evidence of the Letters Patent at all, we are *bound* to do it in the gross, without dividing sentences, or putting a *forced* construction upon the *intentions* of those who made them. Let Mr. Blachford remember, that the *intentions* of men who lived above a century ago, can only be collected from their words and actions, as they are handed to us upon record. To attempt to prove their *designs* by a bare *supposition* of what they *might have done*, opposed to what they *really did*, is mere trifling and impertinence, and but ill suited to the character of a gentleman of his appearance.

Upon the whole, in whatever point of view we consider the Arbitrator's *Reasons*, we shall still find them grounded upon a manifest error both in law and fact. It is abundantly obvious, from the bulk of evidence heretofore adduced in behalf of Mr. Barfoot's right, that nothing less than a power *equal* in authority, and *prior* in date, to that under which he claims, could possibly supersede his title. Nothing of this amount has yet been proved, nor any prior right established. The spot of land is decidedly within the *description*, and contained in the *Grant*. I shall therefore not scruple to affirm, That the inference drawn from the *preamble* to the Grant, stating, *That the right of the Representatives of Mary and William Wandesford, to the spot in question, would operate in express contradiction to the words and meaning of the Letters Patent*, is unsupported by evidence, contradictory in
M 2 itself.

itself, and repugnant to those principles both of *legal* and *equitable* rules, by which the Arbitrator affects to have been governed in his enquiry.

Convinced of the *truth* of these remarks, Mr. Barfoot lost no time in making application to the Court of King's Bench for redress. He represented the many appearances of *partiality* in the *conduct* of the Arbitrator; and stated his *error*, in determining the land to be the property of the Bishop of Winchester. Under these circumstances, the Court granted a Rule, by which it was left in the *option* of Mr. Blachford, either to relinquish his award, or to establish, by the affidavits of himself and witnesses, the principle upon which it was made.

In whatever cause an obstinate man embarks, he seldom chuses to retract. The Arbitrator felt the indignity of having either his judgment questioned, or his decision impeached; and therefore determined to *justify* his award. In this attempt, those who acted under the influence of the Bishop, and whose interests were combined with that of the Trustees, were ready to assist him.

To copy their affidavits through the technical form of expression, would be to exhaust the patience of the reader, without informing his understanding. Let it suffice,

suffice, that we only collect those depositions, that are directly *opposed* to the *two points*, upon which the *legality* of the award has been disputed. At the same time those, who from curiosity, or *suspicion* of our candour, may wish to inspect the affidavits in their original form, may either see them, or obtain copies, by application to the Crown Office, from whence the following extracts were made.

Mr. Joseph Bingham Mant, of Havant, woodward to the late Bishop of Winchester, on his oath declares, “ That *he himself* suggested to Mr. Bargus and Sir William Benett, the expediency of widening the road over Fareham quay ; because, on his view thereof, he found it *dangerously narrow*. And that *he* undertook to widen the same, for the sum of thirty pounds, which was paid him by Mr. Bedford, Clerk to the Commissioners. That he widened the same upon the beach land adjoining, *because he understood, and believes it to be, the waste land of the Bishop of Winchester, and part of his manor of Fareham*. That the said Richard Bargus had *no concern whatever* in ordering the said work, and that Sir William Benett expressed his *entire* approbation of it (*u*). That he was present

(*u*) This declaration is confessedly made to *exculpate* Mr. Bargus and the Trustees from the charges brought against them by Mr. Barfoot. How far it can be relied on, may be gathered from Mr. Mant’s own evidence, p. 102.—from Mr. Bedford’s instructions to Counsel, p. 34.—from the plea to Mr. Barfoot’s action, p. 58.—from Mr. Bargus’s evidence at Winchester assizes, p. 71.—or from Mr. Marshall’s opinion, and the note, in p. 103, 104, 105, &c.

during the time of, and gave evidence at, the arbitration; and that, upon his oath, no proof was produced or offered to the said Arbitrator, by or on behalf of the said Peter Barfoot's estate of Quay-clofe extending into the sea, or taking in *any part of the spot in question*. But, that on the contrary, very strong evidence was produced to prove *the whole width* of the said Peter Barfoot's quay or wharf was *an encroachment on Fareham quay* (x). And this deponent further declares, that no appearance of *partiality* or *prejudice* whatsoever was shewn by the Arbitrator, during the whole investigation of the business."—Sworn before *Richard Newland*, a Commissioner.

Mr. Stephen Gaselee, of Portsea, and Capt. James Lys of Gosport, *two of the Trustees*, upon their oaths declare, "That they were present at the arbitration, and that no evidence whatsoever was produced on the part of the said Peter Barfoot, to prove that Quay-clofe extended beyond the wharf and quay of the said Peter Barfoot, or that it took in *any part of the spot in question*; but that a very *satisfactory title* was proved in the bishop of Winchester *to the beach waste*, as part of his manor of Fareham, so far as low water mark; and that the spot in question *is part of such beach waste*. That Mr. John Gringo, when he built the quay now

(x) It is a common thing, in *modern* dialectics, to prove *too little*, by attempting to prove *too much*. This part of the affidavit is therefore most respectfully addressed to those, whose *credulity* is balanced by the *veracity* of this deponent!

belonging to the said Peter Barfoot, *encroached* upon and took away many feet of the *Bishop's quay*, otherwise Fareham quay, and took the facing stones, and used them in erecting the front of his own quay (y). That the Bishop of Winchester, or his tenants, have, since the *removal* of sea-mill, kept up the embankment at Fareham quay, *to prevent the road being washed away by the sea*. And these deponents further most solemnly declare, that the character of the said R. P. Blachford stands so high in the county of Southampton (z), that they do not believe him capable of *prejudice* or *partiality* !"—Sworn before *Thomas Lys*, a Commissioner.

Mr. John Green, of Fareham, the witness whose evidence occupies from p. 104 to 112, now *fixes* the same by swearing, "That the spot in question *is part of the waste land belonging to the Bishop of Winchester, and within the manor of Fareham*. That presentments have been made at the manor courts, when the *quay* was out of repair, and that it was the right of the Bishop

(y) This is a literal transcript of the evidence of John Cluer, before the Arbitrator: see p. 108, &c. This witness is still alive. Why did not Mr. Bedford suffer the man to swear for himself, instead of putting his words into the mouths of these deponents? He should remember, That respectability of character will not establish a false deduction.---See these circumstances proved acts of ownership, p. 139.

(z) A good memento to those who have a character to lose!

or his tenants *to repair the same* (a). That Mr. Gringo was formerly *tenant* to the Bishop, of his Cottage and Marsh at Fareham quay; and this deponent believes, that in consequence thereof he demanded wharfage for goods landed on Fareham quay: but that his father refused to pay wharfage, and Mr. Gringo commenced an action for the same, but was afraid to try it (b). Saith further, that he was examined as a witness at the arbitration, and that he saw *no partiality whatever*, in the conduct of the Arbitrator."—Sworn before *Stephen Barney*, a Commissioner.

Richard Bargus, Esq. *Justice of Peace, Trustee of the Road*, and *prosecutor in this cause*, swears, "That it is the Bishop's *right* to keep Fareham quay, and the embankment against the sea there, *in repair*. That he had no *concern whatever* in *widening* the road there (c). That he joined with the other Trustees, in making *an order* to pay Mr. Mant 30l. for widening the road over the quay, from a conviction that such widening *was necessary for the safety of the road*; but denies

(a) However Mr. Green may have formed his affidavit---or at least, Mr. Bedford for him, I assert, that these presentments were for the repairs of the *fluvie* or *bridge*, whenever the safety of the road required it---and not for a quay.—If I assert a falsehood, why not produce the copy of some presentment, that will establish the contrary fact.

(b) See this circumstance fully explained in the note, p. 107.

(c) See Mr. Bedford's letter to Mant, in the note, p. 104, which will illustrate this deposition.

taking

taking any part of the land of the said Peter Barfoot, for the purpose of making a quay. That the quay hath been always used as a free quay; and that the land whereon it has been widened, *is the beach land belonging to the said manor of Fareham*. This deponent further saith, That he was present during the whole time of the arbitration, and saw *no partiality whatever* in the conduct of the Arbitrator. That the business was not over till past ten o'clock at night, and that as he knew the Red Lion Inn at Fareham where the arbitration was held, *was small and crowded*, he did ask the said R. P. Blachford to sleep at his house. That he had *before*, no acquaintance with, nor knowledge of, the said Arbitrator, except meeting him *many times* at Winchester, in the public business of the county, *previous to the said (d) arbitration*! That the said R. P. Blachford, did at the time observe, to this deponent, a *seeming impropriety* in accepting the invitation; but said, No conversation *need* pass relative to the business. This deponent doth also admit, that he did invite Mr. James Serle, the Bishop's steward, and Mr. John Ridding, the Chapter clerk, to *breakfast* the next morning *with* the said Arbitrator; but that no conversation whatever happened concerning the said business of Fareham quay, or of the said arbitration, nor was any attempt whatsoever made to *bias* or *in-*

(d) Then it is impossible for connexions to be formed, or interests combined, at the public meetings of a county? Had Mr. Bergus been better acquainted with our *public seminaries*, he would have told a different tale!

fluence

fluence the said R. P. Blachford in making his award."

—Sworn before *Stephen Barney*, a Commissioner.

Charles Ward, a shopkeeper, and John Hunt, a Shoemaker, both of Fareham, depose, "That they attended and heard the whole of the arbitration, out of curiosity; and being *indifferent* persons, and *unbiassed*, declare, That they did not perceive any degree of *partiality* in the conduct of the Arbitrator."—Sworn before *Stephen Barney*, a Commissioner.

Charles Ley, a surveyor, at Fareham, swears, "That he was employed by the said Peter Barfoot, to measure and survey his two estates of the Quay-clofe, and mudlands at Fareham. That he measured and planned the same, first by himself, and afterwards in company with Mr. Gover of Winchester, in order that they might jointly agree in their evidence relative to the extent of the said premises. This deponent further saith, That he was directed by the said Peter Barfoot, to measure his estate of Quay-clofe by the *statute* acre, and that by such measurement, *he could not make the quantity of land described in his title deeds*, without going out *upon the mudlands into the sea*; but that he has *since* discovered that the customary measurement in and about Fareham, is only *six score rod to the acre*; and according to *that* measurement, the said Peter Barfoot has the whole of his six acres of land, independent of his wharf and quay, and therefore, this deponent *takes upon him to SWEAR*, that the said Quay-

Quay-clofe estate could not take in any part of the mudland (e). And this deponent further faith, that he was present during the arbitration, and that the business was enquired into with the utmost degree of *fairness* and *impartiality*. This deponent further faith, That since the said arbitration was held, he has been at the said Peter Barfoot's house, and in company with most or all the parties who attended the arbitration on his behalf, and that they all declared themselves *satisfied with the Arbitrator's conduct*. That the plan produced by Mr. Bedford, against the plan of this deponent, though *unauthenticated*, was *perfectly correct*, and did not tend to *deceive* or *mislead* the Arbitrator."—Sworn before *Stephen Barney*, a Commissioner.

James Serle, Esq. Steward to the Bishop of Winchester, and Mr. John Ridding, Chapter Clerk to the Dean and Chapter of Winchester, severally make oath and declare, "That they attended the arbitration at Fareham, to exhibit some records, *which Mr. Bedford*, Clerk to the Commissioners of the turnpike road, *THOUGHT MATERIAL to shew the right of the Bishop of Winchester to the spot in question*. And these deponents say, that *they were not present* during the whole time of the arbitration; but while they were present, it appeared to them that the said R. P. Blachford conducted himself with great patience, temper, and impartiality.

(e) How does he get rid of the evidence of the land-marks, and the right of this estate to low water mark?

That

That in consequence of an *invitation* from Mr. Bargus, these deponents went the next morning *to breakfast with the Arbitrator at the said Bargus's house*; but that no conversation was had, to their knowledge or belief, relative to the business of the said arbitration."—
Sworn before *George Fleetwood*, a Commissioner.

James Bedford, Clerk to the trustees, and *attorney in this cause*, upon his oath declares, "That in or about the year 1780, the supporters to the sluice under the turnpike road at Fareham quay, being in a ruinous state, and the road there dangerously narrow, the same was widened about *six or seven feet (f)* upon the adjoining beach, which this deponent verily believes to have immemorially *been considered* as part of the *waste land of the Bishop of Winchester's manor of Fareham*; and that the same was widened for the benefit of the turnpike road, and not for the purpose of a quay. Saith that he did, by order of the trustees, send the said Peter Barfoot a copy of the order for putting up posts

(f) Mr. Bedford, in his case stated for Counsel, *acknowledges* this widening extended *ten feet* upon the mud, p. 34. In his letter, stating the *same case* to the Bishop of Winchester, he declares the widening was carried out only *four or five feet*, p. 40. In his present affidavit, he *swears* to about *six or seven feet*! Thus, in *three statements of the same fact*, and in the *same cause*, he gives us *three different accounts*!---Which are we to believe?---If we are governed by the joint evidence of Gover and Ley, who measured it, *ten feet* appears to be the average width.—
See p. 90.

and

and rails, or for having the land valued between the said Peter Barfoot and the Commissioners; but this deponent, upon his oath declares, that the trustees did not direct such order from a conviction that the land *belonged to the said Peter Barfoot*, but merely, if possible, *to prevent litigation*, and to get rid of *applications disagreeable to them*, and to preserve the *peace and harmony* of their meetings. And this deponent further saith, that he admitted the title of Quay-clofe to be *out of dispute*, because he was and is satisfied, that Quay-clofe does not comprehend any part of the spot in question (g). And this deponent positively declares, that *no title whatsoever to the spot in question, or to any part thereof*, was in his judgment *produced or offered* by or on the part of the said Peter Barfoot, to shew that Quay-clofe projected or extended into the sea; but that there was good evidence to shew, that the beach waste to low water mark *belonged to the Bishop of Winchester*. And this deponent further saith, That on or about the 17th of October 1786, he received from the said R. P. Blachford a paper writing, purporting to be the Award of the said R. P. Blachford, dated the 16th of the said October; and this deponent observing the said award to be *informal*, and written upon *unstamped paper*, did apply to the said Arbitrator to sign an award upon proper stamped paper, and to add the words "*I do award*," which the said Arbitrator

(g) To be sure Mr. Bedford must be well qualified to determine the extent of an estate, the writings of which he never in his life examined!

CON-

consented to do. Saith that the said R. P. Blachford in consequence hereof, on the 30th of the said October, *came to this deponent's house*, and that the award was *then and there* copied over and executed. And this deponent saith *he* caused a copy of the said award to be *made and delivered* to the said George Godden, the said Peter Barfoot's attorney. And this deponent further saith that the said R. P. Blachford conducted himself upon principles of the purest *impartiality, candour, and integrity*.—Sworn before *Joseph Bettefworth*, a Commissioner.

Robert Pope Blachford, Esq. of Osborne, in the Isle of Wight, *the Arbitrator in this cause*, upon his oath declares, “ That he left his house in the Isle of Wight on the morning of the 22d of August, 1786, with an *intention* of hearing as much of the cause as he conveniently could that day, and *of sleeping that night* at the house of the Rev. Dr. Ballard, who lives about four miles from Fareham. But the business not being over till ten o'clock at night, the said Richard Bargus asked him *to sup and take a bed at his house*. That the lateness of the hour made it inconvenient for this deponent to go to his friends, *who did not know of his coming*; and as the Inn he was at *was small and crowded*, he *accepted* the said Bargus's offer, observing, that no conversation relative to the business need take place. That the next morning Mr. James Serle and Mr. John Ridding came there to breakfast; but that *no conversation whatsoever*, relative to the said

ar-

arbitration, was had with the aforesaid persons, or with the said Richard Bargus, from the time of hearing the evidence, to the time of this deponent's making and sending his award. And this deponent further declares, That having taken a long time to weigh the evidence and matters before him, he was, and is satisfied, that the said Peter Barfoot *had no title whatsoever to any part of the land in dispute*; and therefore he did accordingly make his award in writing, which was witnessed by *Lovelace Bigg*, and sent a copy thereof, dated the *sixteenth* of October, to the attorney of each party. That shortly after, James Bedford, attorney for the said Richard Bargus, waited upon this deponent, to inform him that his award should have been written on a five shilling stamped paper; and that the award he received was on plain paper. And that the words, "*I do award*," were necessary to be inserted. This deponent conceiving such alterations were proper to be made, and that they did not alter the intent and meaning of his award, this deponent did, on the *thirtieth* day of October, call on George Godden, attorney for the said Peter Barfoot, to inform him of the alteration he intended to make; and he desired the said George Godden to give him the former award back, for the purpose of making such alteration. Saith, that the said Godden told him the award was with the said Peter Barfoot; but that it was of no efficacy till it was made upon stamps. That this deponent hereupon desired the said Godden to copy the same on stamps, and to bring or send it to this deponent, and he

he would sign the same. And this deponent also informed the said Godden, that he should then go to the house of the said James Bedford, and *there* sign a copy of the award upon stamped paper, with the addition of the words, "*I do award.*" That this deponent went accordingly, and signed such award in the presence of *Robert Hall*, one of the Clerks of Messrs. Bedford and Hancock, who attested the same. That such award bears date the *thirtieth* of October, the day on which it was executed; and contains the *Opinion* of this deponent concerning *the land in question*. And further, this deponent declares, that he was in no manner *biased* or *influenced* by any person or persons to make the said award; but that he made the same according to the *best of his judgment, founded on the evidence and proofs produced by the several parties, at the hearing of the said business.*"—Sworn before *Richard Clarke*, a Commissioner.

Such are the affidavits, by which this award has been confirmed, and the freehold of an injured individual deliberately wrested from him. The reader may probably ask, Why the award did not fall by its own *informality*? or, Why Mr. Barfoot did not oppose the affidavits by *positive proof* that the Bishop had *no title*? The answer is, That Mr. Barfoot's application to the Court to compel the Arbitrator to *justify*, was a tacit acknowledgment that the award was *good in form*; and, in the second place, no appeal will lie against *positive* affidavits. And hence it is, that if an

un-

unfortunate man, howsoever innocent, be charged with a capital offence upon the *positive affirmatives* of only *two false witnesses*, his LIFE is forfeited! Humanity, indeed, if the discovery be made in time, may stop the *executive* hand of Justice---but the *law* admits of no appeal.

To determine how far these depositions are founded in truth---whether the transaction be impartially related---and the facts such as have been previously established by evidence, requires a critical investigation of the affidavits. Nor is this alone sufficient. We must consider, *who these deponents are?*---by what *motives* they are influenced?---whether *interested* in the event?---and in what *relation* they stand with *each other*---before we can decide upon a business of so much delicacy and importance. Let us examine it with moderation and candour.

Mr. Mant stands first upon record, as well to avow the Bishop's title, as to shelter his coadjutor Bergus from every appearance of blame. He declared, upon his oath, at the arbitration, that Mr. Bergus *first* applied to him to widen the road. In his *present* affidavit he affirms, that he *himself* suggested the expediency of such a measure *to* Mr. Bergus (*b*).

What

(*b*) To place the true character of this *double dealer* in an obvious point of view, we shall here introduce a *tête à tête*, which passed upon this business, between Mr. Mant and another gentleman, in his *own parlour at Havant*. The conversation was taken down at the time, and is as nearly *verbatim* as possible.

N

Q. Did

What idea can we form of this deponent's veracity, who in swearing *twice* to the *same* fact, flatly contradicts himself? We are certainly justified under such a circumstance, in declaring his evidence inadmissible.

Capt. Lys, and Mr. Stephen Gaselee, being *two* of the *Trustees* concerned in the present litigation, accounts to us, naturally enough, for this otherwise very extraordinary affidavit. It is however to be hoped, for the internal peace of their own minds, that these gentlemen will weigh the consequences of making *light* of *such* appeals to the Deity; since it will presently

Q. Did you pay in *timber*, or in *money*, the expences of altering and widening Fareham quay?

A. I paid in *money*, and *not* in *timber* *.

Q. What might have been the total expence of this job?

A. One hundred seventy-nine pounds six shillings; out of which the Trustees allowed thirty pounds for filling in the road; and I paid the residue.

Q. Who did you pay this money to?

A. To Nicholls, a bricklayer, and Stevens, a carpenter, both of Fareham.

Q. Who applied *first* to have this alteration made?

A. Mr. BARGUS, and the *Gentlemen* of Fareham. The application was made to the Bishop of Winchester.

Q. Did the Bishop of Winchester, or *yourself*, employ and pay the workmen?

A. I contracted with, and paid Nicholls and Stevens; but they paid the workmen.

Q. What time were they set to work, and when, and by whom?

A. I cannot tell.

* Here Mr. Mant also contradicts himself by his own evidence, p. 103.

Q. Was

sently appear, that their depositions are not the result of their own immediate knowledge of the facts.

Mr. John Green, of Fareham, attracts our notice by the singular zeal with which he prosecutes the object before him. Whoever attends to the particulars of his evidence, and the note thereupon, in p. 107, &c. cannot fail to give him all the credit his affidavit deserves!

We could not expect Mr. Bergus, the projector of the encroachment, and the prosecutor in the cause, would have sworn less than he has done. Whoever has the honor of knowing this deponent, or who heard his examination at Winchester assizes, cannot

Q. Was it the *late* Bishop that lengthened the sluice?—or *who*?

A. It was the Trustees of the road, with MY consent, and their agreeing to pay the thirty pounds.

Q. How did they obtain leave to widen it upon the beach, and to put the Bishop to so much expence?

A. It was done to increase the road. I GAVE THE WASTE*; for it was always looked upon as waste ground.

Q. Who paid you the thirty pounds from the Trustees?

A. Mr. Bedford, by order of Mr. Bergus.

Here is the plain, undissembled, history of the transaction. It requires no illustration. Mr. Bergus *asked*—and Mr. Mant *gave*! The most unequivocal tokens of perfect cordiality and friendship!—It would really add to the *reputation* of these gentlemen, if they would produce some *authority*, under the *hand* of the *late* or *present* Bishop of Winchester for widening this quay, and taking in the land; particularly as we have already shewn, and shall hereafter prove, that not a foot of it belongs to the Diocese.

* See the note, at foot of page 103.

but admire the modesty and circumspection with which his affidavit is drawn.

Charles Ward, and John Hunt, are obtruded upon us, as two mighty *curious*, but no less *unbiassed* witnesses. Without disputing their *ability* to decide upon the conduct of the Arbitrator, I shall content myself with remarking, that they are *near neighbours* to Mr. Justice Bargus—one takes the *length* of the worthy magistrate's foot---while the other supplies *Madam* with thread, needles, and tape!

Charles Ley, swears in behalf of Mr. Barfoot, till every contrivance to extort money was exhausted; and *then* he deserts him. It was found, that "*He who bids most,*" is this man's motto; and the discovery was no sooner made, than he was enlisted under the episcopal banner. Captain Bargus (*i*) received him without the formality of a previous *examination*----contending, that he would be found an essential *prop* to the Bishop's claim (*k*)!

The

(*i*) This gentleman was formerly a subordinate officer in the Navy. He had the good fortune to be on board at the capture of a prize, and his share of the prize-money was sufficient to distinguish his *pecuniary* character, from his *love* to his country.

(*k*) The perfidy of this deponent is almost beyond example. He would not however have provoked our notice, had he not been found in this company. He was originally employed by Mr. Bar-

The affidavit of James Serle, Esq. and Mr. John Ridding, merits particular attention and regard.---
 “ They attended the arbitration to exhibit records---
not that THEY thought material---but that *Mr. Bedford*
 thought material---to *shew the right of the Bishop of*
Winchester to the spot in question.” And further, that
 “ they were not present during *the whole time* of the
 arbitration---but while they *were* present, they saw no
 partiality,” &c. Let it be remembered, that this is
 the affidavit of the *Bishop's officers*; and that they
disclaim the remotest attempt to *swear*, that the Bishop
 has any right to the spot! nor do they say, that the
 Arbitrator *was not guilty* of partiality. For the sake
 of truth, let the reader compare *this* affidavit with all

Barfoot, and liberally paid. He gave early proofs of a treacherous design; and therefore Mr. Gover measured the premises with him a second time, for no other purpose than to keep him honest. He received, in the whole, about eleven pounds for this trifling business, exclusive of expences; but not satisfied, he still attempted to extort a further sum; and because it was not complied with, he had the audacity to institute an action against Mr. Barfoot for ten pounds and upwards, under the stile and title of Charles Ley, Esquire, and he desired Mr. Gover to inform Mr. Barfoot, that if he did not comply with this demand, he would go over to the other party, and do him every injury in his power! When the action came to an issue, Mr. Barfoot obtained judgment against him; and for the sake of public example, would have levied it upon him—but he was *non est inventus*! If there can be a stronger proof of a weak head, and a bad heart, than what Mr. Bargus betrayed, by encouraging this fellow in the above infamous proceeding, I will thank the man that shall give it a name!

the others; and he will find, that none of them bear the slightest resemblance with it. *Those* are drawn---*secundum artem*, for each deponent uniformly to support the *same facts*. This conveys the genuine dictates of conscience and truth, without considering whether the same facts *be*, or *be not*, supported. Whoever examines, will not find this a *forced* or *partial* construction, but the result of a fair comparison, which every one is at liberty to make. But let not the circumstance be a matter of surprise. Mr. Bedford drew up *all* the affidavits, and if these gentlemen chose to swear with more caution than the rest, it was not *his* fault.--- He, I am certain, acted upon the broad ground of a professional lawyer; without consulting any other *dictum*, than the *case* and *condition* of his client.----- He sent the *form* of an affidavit *ready drawn* to Mr. Serle, who had been given to understand, that "*his affidavit* MUST BE MADE." This was complied with---but whoever reflects that Mr. Serle has a large family, and holds a place of considerable emolument under the Bishop of Winchester, cannot refuse the tribute due to his integrity and spirit, in swearing by his *own* conscience, instead of by that of a regulator (1).

The

(1) Mr. Serle appears to have combined the fidelity of an upright Steward, with the honor of a gentleman. We see him labour, with equal industry and zeal, to deduce from record, my Lord Bishop's title; and if we may draw a fair conclusion from his letters to Mr. Bedford, no person was more anxious for his Lordship's

The depositions of Mr. Bedford and the Arbitrator, are the *echo* of *each other*. Embarked in the same bottom, and engaged in the same enterprise, they have exactly the same points to carry, and which it is the great and primary object of the affidavits to establish; namely, "That Quay-cloze does not include any part of the beach or shore"---"That the whole of the beach, including the spot in question, is waste land belonging to the Bishop of Winchester's manor of Fareham"---and, "That the decision of Mr. Blachford is made agreeable to evidence, founded on the purest principles of impartiality, candour, and integrity." Let us consider them in the order they stand.

It is *positively* asserted, upon the oaths of Messrs. Mant, Gaselee, Lys, and Bedford, that *no evidence* was adduced to shew, that Quay-cloze extended into the sea, or included any part of the spot in question. I flatly contradict them, and affirm, that the strongest evidence that can exist, was brought to prove the fact. The Arbitrator was shewn the land-marks, which extend in a direct line to the edge of the channel or bed of Fareham river, taking in all the mud or beach to low water mark, and including a consider-

ship's success. See p. 53, 54, &c. But when that success depended upon a solemn appeal to the Almighty, in support of facts that were never proved in evidence, he had spirit to resist, and virtue to decline, the dirty business. I do not mean to pay Mr. Serle a compliment. I speak of him, as of all the rest, with perfect indifference. Yet, if pain and pleasure should promiscuously rise from these strictures, I would have them fall where they are due.

able part of the spot in question. This was afterwards *proved in evidence* by Mr. Gover.-----And Ley, notwithstanding his subsequent apostacy, swore directly to the same point. He particularly spoke to the landmarks, and pointed them out in his plan. To corroborate and confirm *their* testimony, the title-deeds were produced, which, in *my* idea, is the strongest evidence that could be given; when, instead of opposing them, Mr. Bedford got up, uncalled for, and unsolicited, and publicly declared, "That the title of Quay-clofe was out of dispute, and that he meant only to oppose the claim set up under Franklin's Deed! What evidence can be stronger, or more in point? and for its *authenticity*, I appeal to the Arbitrator's minutes taken down at the time. How then can these gentlemen presume to insult us with a positive declaration, "That no evidence WHATSOEVER was adduced in behalf of *this* claim?"

Another curious manœuvre to contract this estate, and to remove, if possible, its right to low water mark, is the *pretence* set up and sworn to by Bedford and Ley, that an acre of land in and about Fareham, contains only one hundred and twenty rod; and that Quay-clofe consists of six acres of *this* denomination, instead of six *statute* acres! It happens, however, that this estate has been twice measured in the life time of the late Mr. Gringo, and in the time of his grandfather, and it was upon all occasions estimated by the
statute

statute acre. Besides, the *land-marks* operate against every objection of the kind (m).

The next affirmative states, " That the whole of this mudland or beach belongs to the Bishop of Winchester, and constitutes part of *his* manor of Fareham." After what has been premised, I can scarcely persuade myself, that a *doubt* remains of the contrary fact; first, because no *evidence*, except what is founded upon *presumption*, has been produced in the Bishop's favour. Secondly, because the court rolls of the manor of Fareham *do not include* the premises; and, thirdly, because Mr. Serle, the Bishop's steward, and the only person competent to the undertaking, could not produce a single instance of episcopal jurisdiction or manerial right, having ever been exercised over this land, by the Bishop of Winchester, or his predecessors. But if these reasons are insufficient, I will give some that shall be more decisive.

This beach or waste mudland, which consists of about five acres and a half (n), happens to be *wholly surrounded* by lands and tenements, in the manor of Cams. The estate of Quay-close, which stands on

(m) Upon enquiry, I am confidently informed, that lands in and about Fareham are measured by the statute acre *only*, except *coppice* land, and the partial estimate of farmers for the purpose of sowing their seeds. Any doubt arising upon this fact, may be removed, by consulting the landholders on the spot.

(n) See extract from Franklin's deed, p. 123, and observations thereon, p. 140.

the

the south, and the tenement formerly in the occupation of Isaac Jurd, which adjoins the Bishop's cottage on the west, have immemorially paid quit-rents to the Lord of the Manor of Cams, as will more fully appear from the following entries, extracted from Mr. Gringo's books.

" RICHARD CHAMPNEYS, Esq. *Lord of the Manor of Cams,*
DR.

May, 1756. To breaming his old sloop on my beach	0	2	6
Sept. 1757. To breaming his yacht on ditto -	0	5	0
Oct. 1758. To breaming his large yacht on ditto	0	5	0
	<hr/>		
	0	12	6

May 6, 1763, Settled the above, and paid him at same time, as per receipt, for eleven years and three quarters quit-rent for Dock, Dock-yard, and Quay-clofe, at 4s. per year

Ditto, for eleven years and three quarters quit-rent for Jurd's house on <i>Fareham quay</i> -	1	3	6
Ditto, for the Clofe, late Cooper's (o) -	0	11	9
	<hr/>		
	4	2	3

Hence it is evident, that the premises on the south and west, are within the manor of Cams. The lands

(o) Exclusive of proving, that the spot in question is no part of the Bishop's manor, these entries incontestibly shew, that Quay-clofe includes the beach to low water mark; or it would have been impossible for ships to be laid upon it, either to be built or repaired. A variety of similar entries stand upon Mr. Gringo's books. See also Spershott's evidence, and other testimonies, p. 83, 84, 85, 93, 97, 98, &c.

on

on the east, consist of part of Cams estate. The north side is bounded by a wharf or quay, erected by the said Mr. Champneys, about forty years ago, which projects in and upon part of the *three* acres of mudland, reserved by Mr. Franklin to himself, when he sold off the *two* acres to Mr. Gringo; and *that* wharf and premises, are likewise within the manor of Cams. Thus, on *every side*, as well as upon *part* of the very mudland *in dispute*, the Lord of the Manor of Cams exercises manerial jurisdiction (*p*). Let those therefore, who have *positively sworn*, that this mudland is part of the manor of Fareham (*q*), explain to us, how it is to be *united* with the *other* part?

Those who are conversant with the bearings of these manors, as they respect each other, may pretend that the Bishop's manor extends to this beach or shore *on the north*. I admit that the manor of Fareham is situate on *that side*, and that it cannot approach these premises in any other direction; but I affirm that it does not extend so far;-----and I will prove it.

Soon after Mr. Champneys had erected the above-mentioned quay, John Duthy, Esq. the then active

(*p*) The *right* of the Lord of the Manor of Cams over the two acres sold to Mr. Gringo, was granted, and set over, in the purchase deed. See p. 126.

(*q*) This was sworn to by Mr. Bedford, Mr. Mant, Mr. Gaselee, Mr. Lys, Mr. Green, and Mr. Bargus.

and

and indefatigable Steward of the late Bishop of Winchester, found himself under a doubt, whether the jurisdiction of the manor of Fareham extended to this beach or not. He consulted his lord---he examined the court-rolls---but could not find any traces of such a right. He resolved, therefore, to ascertain by stratagem, what he could not determine by evidence. When the next Court Baron was held, he formally demanded, with all the confidence of official authority, *twenty guineas*, as a fine to the Bishop of Winchester, for the soil on which the quay was erected! This demand was rejected with as much confidence as it was made; and Mr. Duthy, and the Bishop of Winchester, were set at defiance. The land was proved to be in the manor of Cams---Mr. Duthy was convinced of his error; and candidly acknowledged, that having been *himself* in doubt, he had made use of the foregoing experiment, for no other purpose than to ascertain the right.

It may be urged, that what has been said, is a mere assertion, without proof. This I shall obviate. The manor of Cams, it is true, owing to the situation of General Carnac, has long lain in a neglected and abandoned state; and its present possessor not having compleated the purchase, cannot enter into the spirit of those privileges it is justly entitled to; and of this circumstance, Mr. Bedford has meanly taken the advantage. But it shall avail him nothing. How much soever the manerial rights of this estate have
grown

grown into difuse, the records, and the court-rolls, are still in being. They are on the spot. Whoever chuses to apply to Mr. Barney, of Fareham, with a fufficient power, may fee chapter and verfe for all I have affirmed. But fhould he not be difpofed to fatisfy respectable enquirers, there is another gentleman, of the *first* professional abilities and character, namely, John Gauler, Efq. of Effex-ftreet, London, who having formerly conveyed this manor for Sir Jacob Wolfe, is now in poffeffion of the papers and documents, appertaining to the rights of this eftate, and where any perfons doubting the above facts, may fee them fully authenticated (r).

If there be yet a pretence, under which the epifcopal title can be fairly fupported, either by thefe deponents

(r) It may be asked, Why thefe facts were not brought out at the arbitration? I anfwer, Becaufe Mr. Gringo's books and papers were at that time WITHHELD by Mr. Barney, under the connivance of Sir William Benett. Mr. Barney was repeatedly applied to for them; and was even threatened to have the Court moved againft him, for detaining them. He did not however chufe to give them up, till Mr. Barfoot had purchafed Sir William Benett's moiety of the Fareham eftates; and then, with great difficulty and reluctance, that gentleman parted with fuch only as he pleased to *acknowledge* were in his poffeffion. Under thefe circumftances, added to the additional confideration, that he is *Clerk* to Mr. Bargus, and to many of *his* colleagues, we cannot expect Mr. Barney will be very forward to produce records in favour of the Lord of the Manor of Cams, although he has charged Sir William Benett and Mr. Barfoot, in his accounts of bufinefs tranfacted for them, with payment of feveral years' quit rent for Jurd's houfe, and Quay-clofe, to the manor of Cams,

or

or their colleagues, let me request them to name it. They shall have my thanks, and my applause, with the same cordiality, as though I were my Lord Bishop; and I am sure the part they have taken in the business, will at least require some such justification; for since it was their determined resolution, *at any hazard*, to confirm the award, it is mine to expose its inconsistency, and to fix it upon record.

It now remains, that I say something on the score of *impartiality*. In doing this, I make no apology for addressing myself in direct terms to the Arbitrator.

AND ARE YOU SURE, SIR, that you have been "in no manner biased or influenced?"---that your award "is founded on the evidence and *proofs* produced by *both* parties?"---and, that you have conducted the enquiry "upon the *purest* principles of impartiality, candour, and integrity?"---We know these are the harmonious strains infused by the gentle hand of Mr. Bedford into the affidavits; and they may be melody itself in the ear of Mr. Blachford! But is it *sound*, or sober *sense*, that we are to regard?---that we are to make sacred, by the awful solemnity of our oaths? ---But I will not deal uncandidly with you.---I will conform to your request, and, for a moment, place myself in your situation. I will consider how unpleasant the office of a sole (*s*) Arbitrator is; and, without the indecency of declaring to your face that

(s) See conclusion of Mr. Blachford's letter, p. 147.

you have *done wrong*, I shall perhaps, with all the politeness imaginable, make it appear so.

Had *I* been in Mr. Blachford's shoes, when solicited by the learned Judge to undertake the enquiry, instead of accepting it with an *awkward* unwillingness, I would have nobly avowed the *situation* in which I stood, and *declined it* with the dignity of a gentleman. I would have openly and generously confessed, that I had *previously* united with Mr. Bargus on the Grand Jury, and had voted for the indictment *then* trying *against* Mr. Barfoot! I would neither have been ashamed of the doctrine ' had taken up, nor of the party I had adopted (*t*).

But you, Sir, I presume, conceived an opposite conduct was best calculated to restore *peace* and *harmony* to the turnpike meetings---to prevent *litigation*---and to get rid of applications *disagreeable* to the Trustees (*u*)! With these objects before you, the *unpleasant* situation of a *sole* Arbitrator, is forgotten!-- Influenced by the *purest* principles of *impartiality*,

(*t*) It seems, that the gentlemen of the Grand Jury, notwithstanding Mr. Bargus and his son in law, and others of his party were upon the list, were so divided in their opinion, concerning the nature of the land upon which the turnpike road had been widened, that the success of the bill stood upon a casting vote.—Whether Mr. Blachford gave that casting vote or not, we shall leave to the decision of his own memory and conscience!—It was not discovered that the Arbitrator was upon this jury, till some time after he had made his award.

(*u*) See Mr. Bedford's affidavit, p. 178.

you

you accept the *office*, after you had *pre-judged* the cause! From motives of *integrity*, you submit to act under a Rule of Court, and consult Counsel how it may be evaded (x)! Upon principles of *candour*, you adhere implicitly to your own *primary* opinion, in opposition to fundamental evidence!

Under the same *dispassionate* frame of mind, you proceed to the enquiry---you suffer Mr. Bargus to interfere with the evidence---you sojourn with *his* family---you mix with *his* witnesses---you eat and drink at *his* table---you sleep in *his* bosom!----- Thus, from the Grand Jury Chamber to Westminster Hall, we trace, in every step you take, the vestiges of "*impartiality, candour, and integrity!*" Surely, Sir, had you but reflected, that the plain evidence of *facts*, when too *obvious* to be refuted, and too *notorious* to be mistaken, are superior to all the declarations in the universe, you would never have given yourself, nor your friends the trouble, of entering into so voluminous a string of affidavits. *They* might have *justified* under the example of *yourself*---whose character stands *too high* in the county of Southampton, to be suspected *capable* of prejudice or partiality (y)!

But you appear either to suspect the *sincerity* of your panegyrists, or to feel a misapplication of their

(x) Vide Mr. Blachford's letter to Mr. Barfoot's attorney, p. 144.

(y) Affirmed on the oaths of Messrs, Gaselee and Lys, p. 167. praise,

praise. You consider the good opinion of mankind as a fluctuating commodity, and resolve to leave nothing to *chance*. You foresaw, that besides the advantage of standing upon record, your affidavit would afford you an opportunity of descending to particulars---of explaining those mysterious phenomena, which darken the brilliant side of your qualifications. With this incitement you enter upon your *justification*! — Permit me to follow you.

In the morning you set out, with a fixed resolution of sleeping at Dr. Ballard's. In the evening, you no longer see the *necessity* of rigid impartiality---and sleep with Mr. Bargus! But, by the *catena* of unfortunate events with which you were surrounded, *this* inconsistency is *reconciled*.---“The business ended at an *unseasonable* hour”---“the Doctor knew not of your coming”---the Inn “was *small* and *crowded*”---and yourself---reduced to the humble necessity of giving place “to every dirty fellow in the house!” In these doleful moments the compassionate Mr. Bargus came forward---he felt for the *unpleasant* situation of a *sole* Arbitrator---he invited to his convivial board---he pressed with such *polite*, with such *persuasive* eloquence, that even the stubborn *integrity* of the virtuous Mr. Blachford, with his eyes open, and his senses wide awake, *could not* (z) *resist*!

(z) Though the inferiority of the event may *debase* the comparison, yet it bears a strong allusion to the *Tempter* in the act of *seducing* Eve. See Parad. Lost. b. ix.---The *Serpent* beguiled me, and—I did *tat*! Gen. iii. 13.

O

You

You admit the *apparent impropriety* (a) of the thing, and offer the *innocency* of your intention, as an apology! You *swear*, That not a word---no---not one syllable was mentioned in *Mr. Bargus's house*, of the business that brought you there!---But who can believe you? By what logic will you destroy the force of self-evident facts? How evade the doctrine of *causes* and *effects*? As well might you attempt to produce the man that will never die, as to impose impossibilities upon the understanding of mankind.

We are told, that your friend "knew not of your coming." By what fatal omission did this happen? Is it habitual with Mr. Blachford to take his friends by surprise? or does his preliminary card of "compliments" precede his equipage? In the present case I acknowledge it was otherwise; but if I may judge from the punctilio of your manner, this omission happened *by design*, and operates as an exception to your general custom. *Why* it *did* happen, yet remains for *you* to explain.

The Inn "was *small* and *crowded*." Pray, Sir, when you laid your lip upon *the four Evangelists*, did the dining-parlour and with-drawing-room occur to your memory? Did you recollect their dimensions, and the comforts they yielded? Our worthy host considers this part of your affidavit as an unmerited

(a) See page 169. These are the words, both of the Arbitrator, and of Mr. Bargus.

attack upon the credit of his house. He wishes it to be known that the Red Lion Inn at Fareham, is neither so small, nor so despicable, but that it accommodates the most respectable families. The Fareham Assembly is held at this house, and whoever frequents it, knows it constitutes a brilliant meeting of persons of distinction. It may not unaptly be stiled, "a synod of the Graces," where wit, beauty, and elegance, alternately preside. Gentlemen of course resort to it from the most distant neighbourhood; and crowded as the Inn frequently is on these occasions, we never heard of such a complaint before!

But the most serious part of the question remains. Did you,---or did you not,---*apply* for accommodations? Mr. Bargus and yourself have both sworn, that the house "was small and crowded," i. e. no accommodations could be had; and hence, you would have it understood, that inevitable necessity, solely against your will, compelled you to sacrifice the dignity of a Judge, by quartering yourself upon the bounty of a man, whom you were in doubt whether to *convict*, or to (b) *acquit*! This question, Sir, carries with it a very serious consequence; and I sincerely wish you might be able to answer it well.

As to the *mode* and *manner* of publishing your awards, and the *contradictions* which arise upon the

(b) When the evidence on both sides was closed, Mr. Blachford publicly declared, "He should take time to consider of and make his award."

face of them---they are subjects I shall leave to the discussion of those, who are more logically versed in the art of explaining absurdities, and of reconciling solecisms in language, than myself. But however innocently you might pretend these inaccuracies have arisen, or how equitably soever your intentions were directed, yet pardon me if I declare, that the event by no means corresponds with the assertion.

I shall only remark further, that Mr. Godden flatly contradicts your affidavit, and declares, That you never proposed to draw up any award at *his* house. That you did him the honor of a call, and required him to deliver up your *first* award, is certainly true; but when he refused, you told him your *real* award was drawn upon stamps, and lodged in the hands of Mr. Bedford, and that if he would go or send there, he might have a copy of it. Mr. Godden not choosing to concern himself in a matter which bore the appearance of collusion, induced Mr. Bedford to send a copy of the *second* award to him. This, you will remember, bears date the *thirteenth* of October—Your *first* award is dated the *sixteenth*.

Thus far, Sir, I have endeavoured to shew, that your award is *partial*, and your decision not altogether conformable to evidence. I shall now call your attention to the same business, considered in a different point of view; in doing which, I will give you all the fair play you can desire. I will suppose, that Mr. Barfoot had no
imaginable

imaginable right to the spot---that his title was chimerical, and his writings waste paper. Or, *vice versa*, that the Bishop's claim was indisputably clear---that the land was common waste, and the conduct of the Trustees perfectly legal. Still a fatality hangs about your decision, that renders it incompatible with the strict rules of jurisprudence, and with the integrity of an upright Judge. If we admit every plea---every pretence---that yourself and your advocates have set up, still your award is not made according to that established maxim of the laws of Arbitration, *juxta Arbitrium boni viri*.

When you discovered that the Trustees *had done no wrong*, upon what principle of justice did you compel them to pay *their own costs*? If you were convinced that Mr. Barfoot had no right to the spot, you must also have been convinced, that the offence, for which he was indicted, became established. That offence is declared to be, of the most malignant kind. "He cut the land-ties, prostrated the stone wall, pulled up the road, and left it to the mercy of the north-east winds, and a raging sea, by which it not only became impassable, but endangered the *lives* of his Majesty's subjects (c)!" Yet, notwithstanding the enormity of the crime, he was suffered to escape, *by paying his own costs*! Here the same pitiful system which marks the rest of the enquiry, is equally conspicu-

(c) See Mr. Bedford's case, and letter to the Bishop of Winchester, where these words are made use of, and stated as the ground of the indictment.

ous! Having abandoned the rules of "strictly legal evidence," you now affect to compensate for it, by a paltry shew of equity and moderation. To keep up appearances, you feel for the man who had fallen a victim to the mistakes of his ancestors, and who had opposed his private purse to the vindictive prosecution of a party, that litigated with the public trust-money! With these benevolent ideas, and under a strong sense of his sufferings, you determine he shall be excused, *by paying his own costs!* Indeed, Sir, the benevolence of your heart, can only be equalled by the generosity with which it is directed!

Under the Rule of Court, I grant the costs were in your discretion, and they were left so, that you might, at the result of the enquiry, have the liberty of applying them where they were due. And if Mr. Barfoot could prove no right to the land, his conduct left him without excuse.—He stood convicted of a public offence, and it was the duty of your office at least to have compelled the payment of all the costs. Nay, if I were to adopt your own doctrine, and contend that you were not tied down by the Rule of Court,—that an Arbitrator is left *ad libitum* to direct the laws, and not to be directed by them---in that case I should insist, that you were not only bound to award *all* the costs, but to have annexed some penalty or punishment, adequate to the offence. And here let me remark, that notwithstanding your declarations concerning

cerning the extent of your jurisdiction, and the parade of consulting Counsel upon it, I still affirm, that you were bound, by conscience and by law, to have acted strictly under the Rule of Court. The dispute related to freehold land. Had the Reference not been subject to the Rule of Court, the award *must* have fallen to the ground. The Rule *alone* makes the award binding,---and it cannot bind in *one* respect, without binding equally *in all*. You, however, chose to form a different opinion, and have favoured the world with a precedent of the most alarming tendency!

Thus it is apparent, that in whatever view we consider your decision---which way soever we direct our enquiries---whether we regard your attachment to one party---or your benevolent compassion to the other, still it is impossible to reconcile the principles upon which you have acted, by any of those equitable, or impartial rules, which your friends, with so much confidence, have imputed to you.—It is impossible, on any ground, to defend the award: yet, if there be a clue remaining, by which your infatuated mind can possibly trace out a new road to the Bishop's title, by all means indulge the conceit, and bring it forward.

Till then, Sir, permit me to take my leave of you. If I were personally your enemy, I might dwell with malignant pleasure on the folly and weakness of annexing *reasons* to your award---of contending for unlimited power with one hand, and tamely surrendering it up with the other---of disclaiming the remotest impression

impression of undue influence, and yet indulging in its grossest extremes. But I disdain the gratification of idle satire, calculated to torture the mind, without correcting the heart. Throughout my narrative, I have not intentionally deviated from the rules of decorum; but if, from the natural warmth of my temper, any expressions have escaped me, tinged with undue asperity, I trust the impropriety will be forgiven, when the magnitude of the aggravation is considered.



F I N I S

collated
H. B. Quaritch 1st
1915